

**SUPREME COURT OF NIGERIA**  
11TH APRIL, 2008 SC. 166/2001  
**CORAM:- A. I. KATSINA-ALU, S. A. AKINTAN,**  
**M. MOHAMMED, W. S. N. ONNOGHEN,**  
**C. M. CHUKWUMA-ENEH, JJSC**

TIJANI IKOTUN ..... APPELLANTS  
AND  
1. OBA SAMSON OYEKANMI  
2. JOSEPH ADEDOYIN OYEKANMI ..... RESPONDENT

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ESTOPPEL - By judgment - Plea of - How made - Though estoppel by judgment - Has to be specifically pleaded - It is not required to be pleaded in any form - Therefore once it is pleaded - Court should consider both res judicata and issue estoppel (H1)

ESTOPPEL - Issue estoppel - Evidential requirements - Unlike in a plea of res judicata - A party relying on issue estoppel - Need not prove - That the res, the claims and the parties - Are the same in the previous suit - As in subsequent suit (H2)

ESTOPPEL - Nature of - Effect of the plea - Estoppel prevents a party - From proving facts in contradiction to his earlier acts - As such it is a shield never a sword - It has no place in a statement of claim (H3)

ESTOPPEL - Issue estoppel - Evidence Act, s. 55(1) - Purport of the section - Is meant to allow for the plea of issue estoppel - Where a plea of res judicata is not technically possible - As in the instant case (H4)

***FACTS***

The Plaintiff/Appellant sued the Defendants/Respondents at the High Court of Oyo State claiming declarations and injunction meant to uphold his claim that he was the person in possession of a farmland in Erinro, lying between Erinro stream, Oni River, Alaposo stream and Obembe farmland. Appellant's case is that the land in

dispute was granted to his father, by Owa Obokun of Ijesha land. When his father died in 1928, he had put rent paying tenants on the land. On the other hand, the Respondents also claim that the Obokun of Ijesha land had granted the land in dispute to the 2nd Respondent's father, who had taken up possession upon the grant and had remained in possession till his death. Following the death of the 2nd Respondent's father, the land had devolved to the respondents. Both parties pleaded two previous court judgments in respect of the land – Exhibits B and D – in support of their respective cases. Exhibit B is the judgment in suit no:HIL/5/72: *Agunlejika v. Ikotun* (that is the instant appellant), wherein Agunlejika had claimed title to the land in dispute, trespass and injunction against the Appellant. The trial court had granted title to Agunlejika but dismissed his claims for trespass and injunction. Whereupon Appellant had appealed to the Court of Appeal which dismissed the appeal as per Exhibit D. In dismissing the appeal, the Court of Appeal pronounced that the Appellant was neither a customary tenant of Agunlejika nor in possession of the land now in dispute.

After trial, the learned trial judge found for the Appellant and granted the reliefs claimed. The judge held that the Respondents could not plead *res judicata* on the basis of Exhibits B and D as they were not parties thereto. The judge did not consider Exhibits B and D with reference to issue estoppel. Respondents' appeal to the Court of Appeal was allowed. The court considered Exhibits B and D with reference to issue estoppel and held that the Appellant was estopped from re-litigating the issues of possession of the land in dispute as a customary tenant. It held that it was immaterial to the plea of issue estoppel that the Respondents were not parties to Exhibits B and D. Appellant has brought this appeal to the Supreme Court against the judgment of the Court of Appeal.

#### **ISSUE FOR DETERMINATION**

*“Whether the lower court was right in holding that the trial court considered Exhibits B and D for the purpose of res judicata only?”*

**HELD** (Unanimously dismissing the appeal per **CHUKWUMA-ENEH JSC**)

***ESTOPPEL - By judgment - Plea of - How made***

1. I think that, against the background of the facts of this matter, the misconception of the parties' cases as accentuated in the sole issue for determination raised in this matter has clearly portrayed want of proper appreciation of the distinction between issue estoppel and res judicata although both estoppels come under one head as estoppel by judgment with a clear objective to prevent a cause of action and issues as arising from the cause of action and directly decided in a previous suit from being reopened or relitigated in a subsequent litigation by the same parties or their privies. The issue must be relevant in the subsequent proceedings that is as in the instant suit. See: *Osunrinde v Ajamogun* (1992) 6 NWLR (Pt 246) 156. It is in this respect that judgments are said to be conclusive as to cause of action and issues directly arising and decided in the cause of action as between the parties or their privies. One crucial feature of estoppel by judgment is that it has to be specifically pleaded as otherwise it cannot be relied upon in court although It is not required to be pleaded in any form. I have here adverted to the distinction between estoppel and res judicata. When therefore a party as in the instant suit pleads judgments as estoppel, what he is saying in essence is that the court should take the judgment into consideration in considering the totality of his case before the court. (pp. 1788 B/1791 C)

***Issue estoppel - Evidential requirements***

2. On the other hand, issue estoppel arises where an issue has been adjudicated upon by a court of competent jurisdiction and the same issue has arisen in question in a subsequent proceedings between the same parties or their privies. See *Ito v. Ekpe* (2000) 2 S.C. 98, *Ebba v. Ogodo* (2000) 6 S.C. (Pt. 1) 133, *Alakija v. Abdulai* (1998) 5 S.C. 1; (1998) 6 NWLR (Pt. 552) 1. There is however high authority that a party relying on issue estoppel need not prove unlike res judicata that the res, the claims and the parties are the same in the previous suit as in the subsequent proceedings. See: *Ezewani v. Onwordi* (1986) 4 NWLR (Pt. 33) 27. I can therefore find nothing amiss in the defendants/respondents resisting the plaintiff/appellant's claim here by pleading Exhibits A, B and D; even though they are not parties to the said action. (pp. 1789 B/1793 F)

***ESTOPPEL - Nature of - Effect of the plea***

3. Again, it is to be noted that if successfully invoked the jurisdiction of the court is ousted. However, be it noted that a party as in the instant suit, is therefore prevented from proving any facts in contradiction to earlier acts or declarations to the prejudice of the other party who has in reliance thereof has acted on it. It is in regard to the above that estoppel is a shield, and it is never a sword and so cannot be pleaded by the plaintiff; meaning in effect that it has no place in the plaintiff's Statement of Claim but in the Statement of Defence; see *Ukaegbu v Ugorji* (supra); see also *Atolagbe v Shorun* (1985) 1 NWLR 560 at 737, *Adimorah v Ajifo* (1988) 19 NWLR (Pt. 1) 1005. (p. 1789 D)

**D *Issue estoppel - Evidence Act, s. 55(1) - Purport of***

4. The purpose of Section 55 (1) of the Evidence Act, that is to say is to enable judgments relevant to facts in issue in an action to be so pleaded. Section 55(1) provides:-

E *"(1) if a judgment is not pleaded by way of estoppel it is as between parties and privies deemed to be a relevant fact, wherever any matter, which was, or might have been decided in the action in which it was given, is in issue, or is deemed to be relevant to the issue, in any subsequent proceedings.*

F *(2) such a judgment is conclusive proof of the facts which it decides, or might have decided, if the party who gives evidence of it had no opportunity of pleading it as an estoppel."* Therefore, I hold that the question of opening by relitigation of the issues of possession and tenancy of the land in dispute in the instant suit is not sustainable. Again, these issues that is as to possession and tenancy of the land in dispute having been conclusively settled against the appellant as regards the land in dispute as per Exhibits B and D and relevant to the facts in issue in the instant suit clearly come within the ambit of the provisions of Section 55 of the Evidence Act, 1990. H Clearly, therefore, there is no need straining the words of the provision to come to the obvious conclusion to the effect that this case falls squarely within the contemplation of Section 55 (supra). And so, the appellant is estopped as per Section 55 (2) (supra), from reopening

by litigating the aforesaid issues now put in issue in this suit.  
(p. 1794 A/G)

### **REPRESENTATION**

B.A. Aiku, (with him; Siji Alabi), for the Appellant.  
N.O.O. Oke, SAN., (with him; O. O. Ogunnola and A.O. Olori Aje), B  
for the Respondents.

### **CASES REFERRED TO**

A.C.B. Plc v. Losada Nig. Ltd (1995) 7 NWLR (Pt 405) 26 C  
Ibekwe v Maduka (1995) 4 NWLR (Pt 392/ 716  
Okulade v Awosanya (2000) 1 S.C. 107; (2000) 1 SCNQR 149  
Balogun v. Akanji (2005) 3-4 S.C. 95; (1998) 1 NWLR (Pt. 70) 301  
Anyabiwe v. Okolo (1998) 13 NWLR (Pt. 582) 444  
Ezeanya v. Okeke (1995) 4 NWLR (Pt 388) 142 at 161 D  
Balogun v. Adejobi (1995) 2 NWLR (Pt 376) 131 at 149, D - G,  
Faleye v. Adejobi (1995) 3 NWLR (Pt 381) 1  
Odutola v. Oderinde and Ors. (2004) 5 S.C. (Pt. II) 90; (2004) 6  
SCNJ 161 E

### **STATUTE REFERRED TO**

Evidence Act, Cap 112, Laws of the Federation of Nigeria, 1990, ss.  
54 and 55(1)

### **LEAD JUDGMENT BY CHUKWUMA-ENEH JSC**

This is an appeal from the decision of the Court of Appeal,  
Ibadan Division (lower court) dated 28/11/1996. The lower court  
allowed the appeal and set aside the decision of the trial court; in the  
penultimate paragraph to the end of its judgment at page 107 of the G  
record it held as follows:-

*“I think quite clearly Suit HIL 5.72 is conclusive proof that the  
respondent was neither the owner of the land in dispute, nor in pos-  
session of it or a tenant. In the circumstances I am satisfied that by  
virtue of the judgment in Exhibit ‘D’, the respondent was estopped H  
from opening the matter again and instituting the present actions in  
the lower court for Exhibit ‘D’ is a judgment in rem. The fact that the  
claims are the same as the claims in the present case is notewor-*

thy.....”

The plaintiff, (that is, respondent) in the lower court being dissatisfied with the decision has appealed to the court as per the original Notice of Appeal dated 13/1/97 and filed on 21/1/97. By an application, the court has granted the plaintiff/appellant on 16/6/2004 leave to file a fresh Notice of Appeal containing two grounds of appeal. The parties have filed and exchanged their Briefs of Argument. The appellant has also filed a Reply Brief of Argument. The appellant has also raised in his own Brief one issue for determination which has been adopted by the defendants/respondents. It reads as follows:-

*“Whether the lower court was right in holding that the trial court considered Exhibits B and D for the purpose of res judicata only?”*

The plaintiff’s claims in the trial court as per the Amended Writ of Summons dated 11/10/90, at page 20 of the record of appeal read as follows:-

*“1. Declaration that the plaintiff is the person in possession of the farmland situate lying and being at Erinro via Iperindo in the Atakunmosa local Government of Oyo State which farmland is bounded as follow:*

*On the first side by Erinor Stream;*

*On the second side by Oni River;*

*On the third side by Alaposo stream;*

*On the fourth side by Obembe farmland;*

*The annual rental value of the land is N1,000.00*

*2. Declaration that the defendant cannot interfere with the plaintiff’s enjoyment of the farmland or the enjoyment of any person claiming through the plaintiff.*

*3. Injunction restraining the defendants, his servants, agents and/or privies from interfering with the plaintiff’s enjoyment of the farmland or threatening, harassing or embarrassing the plaintiff’s tenants or any person claiming through the plaintiff any portion of the said farmland.”*

The parties, I must observe, have filed and exchanged their respective pleadings. I shall come back to them later on in this judgment.

The plaintiff/appellant’s case in the trial court as per the record

is that, Owa Obokun of Ijesha land had granted the farmland in dispute to the plaintiff's father who died in 1928 and he had put rent paying customary tenants on the farmland. The plaintiff pleaded the judgments in Suits Nos. HIL/9A/71, Ikotun v. Adu and HIL/5/72: Agunlejika v. Ikotun and also appeal No. CA/1/112/70 that is, the decision on appeal against the judgment in Exhibit B to buttress his case against the defendants. B

The defendants/respondents' case on the other hand is that the 2nd defendant/respondent's father was in possession of the farmland in dispute granted to him by Obokun of Ijeshaland and that the same devolved to them that is, defendants/respondents. The defendants/respondents have contended in paragraph 14 of the Statement of Defence that the doctrine of res judicata by virtue of the judgments in Suits Nos. HIL/5/72 and CA/1/112/74, operate against the plaintiff; in other words it prevents, indeed estoppes him from reopening the issues of title, customary tenancy or possession of the land in dispute by instituting the instant suit on the same issues which otherwise were the necessary ingredient in the cause of action proved and conclusively decided in the said judgments as per Exhibits B and D. C D E

Both parties and their witnesses have adduced oral testimonies in the trial court to support the cases as per their respective pleadings. In a considered judgment the trial court found for the plaintiff/appellant. In the words of the trial court, in its judgment at page 38 LL 9-26 it found as follows: - F

*"1st respondent later testified but he had not legal defence to the plaintiff's claim, Exhibits A, B and D which he relied upon did not avail him. The res judicata which was pleaded on his behalf was not legally open to him as he was not a party to the three exhibits mentioned above.* G

*Before I deal with the defence of 2nd defendant, let me state at this juncture that the main claim of the plaintiff is to be declared as the person in possession of the land in dispute i.e. the farmland situated at Erinro via Iperindo.* H

*2nd defendant relied heavily on Exhibits A, B and D and res judicata as his defence. In Exhibit A which is a direct action of ownership of the Land in dispute against the plaintiff, 2nd defendant lost*

*his claim on appeal.*

*In my view Exhibits B and D do not help the 2nd defendant's defence. He is not a relation of Oba Agunlejika who was the plaintiff in the case. He is also not a party in the case.*

B *I would like to state categorically at this juncture that the defence of res judicata is not open to the 2nd defendant."*

C The defendants/respondents as I indicated above appealed the decision to the court below. I have also adverted to the judgment of the court below which allowed the appeal and from which decision the plaintiff/appellant has now appealed to this court.

I now come back to the issues for determination vis-a-vis the arguments of the parties as per their respective Briefs of Argument filed in this matter.

D The appellant in his main Brief of Argument has posited that Exhibit 'B', that is, the judgment in Suit No HIL/5/72 and Exhibit D, that is, the appeal No. CA/1/112/74 - the judgment on appeal against the decision in Exhibit B as pleaded in paragraphs 9, 10 and 12 of the (Amended) Statement of Claim at page 22 of the record cannot  
E be relied on by the defendants/respondents as a shield. When the respondents were not parties to the suits as per Exhibits B and D and the claims thereof as per the said exhibits are not the same and there is evidence on the record and even moreso, as found by the trial court as per the abstract of its judgment above that the respondents are not parties to Exhibit B and D and are total strangers to the  
F claims and issues decided therein. And so, these decisions as judgments in Exhibits B and D, they submit, cannot constitute conclusive proof as against the instant parties and their privies in the instant proceedings in regard to the facts directly in issue  
G therein and actually decided in the said previous suit as per Exhibits B and D and particularly vis a vis the issues of whether the plaintiff/appellant has been in possession of the farmland in dispute under customary tenancy. He has relied on Section 54 of the Evidence Act, Cap 112, Laws of the Federation of Nigeria, 1990 and the case Iyaji  
H v Ejiagbe (1989) 3 NWLR (Pt. 61 ) 522, to contend that once judgment of a court is final it is conclusive proof in subsequent proceeding between the same parties or the privies of the matter actually decided. It is in this respect that the appellant has challenged the



lower court's finding in regard to the legal effect of Exhibits B and D and I quote as per page 103 LL 25-10 of the record thus:-

*"I am therefore in full agreement that the learned trial Judge was wrong to have considered Exhibits B and D for the purpose of res judicata only....."*

Some couple of pages further from the above abstract in the record at p. 107 LL 24-31 to be precise, the lower court again held:

*"In the circumstances, I am satisfied that by virtue of judgment in Exhibit 'D' the respondent was estopped from opening the matter again and instituting the present action in the lower court for Exhibit 'D' is a judgment in rem. The fact that the claims are the same as the claims in the present case is noteworthy."*

The appellant has denounced vehemently the above holding by the lower court and has contended, if I may repeat, to the effect that neither the claim as per Exhibits B and D nor the parties named therein are the same and has further relied on Ezeanya v. Okeke (1995) 4 NWLR (Pt 388) 142 at 161, per Iguh, JSC., Balogun v. Adejobi (1995) 2 NWLR (Pt 376) 131 at 149, D - G, Faleye v. Adejobi (1995) 3 NWLR (Pt 381) 1 and Odutola v. Oderinde and Ors. (2004) 5 S.C. (Pt. II) 90; (2004) 6 SCNJ 161, to further contend that the appellant cannot therefore be said to be relitigating issues directly in issue as per the cause of action as conclusively decided in the judgments as per Exhibits B and D and so he cannot be estopped by the said judgments. And even more so that Exhibit D is not a judgment in rem but in personam.

It is particularly submitted that the lower court has completely misapprehended hence it has misconceived the appellant's case as vividly put in the trial court's finding at page 38 LL 18-26 of the record which for ease of reference I quote as follows:-

*"2nd defendant relied heavily on Exhibits A, B and D and res judicata as his defence. In Exhibit 'A' which is a direct action of ownership of the land in dispute against the plaintiff 2nd defendant lost his claim on appeal."*

*In my view Exhibits B & D do not help the 2nd defendant's defence. He is not a relation of Oba Agunlejika who was the plaintiff in the case. He is also not a party in the case. I would like to state categorically at this juncture that the defence of res judicata is not*

open to the 2nd defendant.”

Underlining mine for emphasis.

It is against the foregoing backdrop that the appellant has submitted that the trial court has in its decision considered Exhibits B and D for the purposes of res Judicata only.

B If, I may digress, could it be said therefore that the defendants/ respondents by their averments in paragraphs 9, 10 and 14 of the Statement of Defence have pleaded issue estoppel and not res judicata. The answer I shall supply in due course, I think the whole essence of pleading Exhibit A by the plaintiff/appellant is to show positively that the respondents are neither the owners nor customary tenants in possession of the farmland in dispute, the 2nd defendant/ respondent having lost in that suit. Besides, whether Exhibits B and D can on the issues decided therein constitute estoppel per rem  
C judicatum against the plaintiff, the defendants not being parties to the said suit, I shall deal with later.

The appellant has attributed the total misapprehension of the appellant’s case in this regard to the lower court’s failure to give due effect to the meaning of the word “and” as used conjunctively in the  
E context of the trial court’s finding that the 2nd defendant relied heavily on Exhibits B and D and res judicata as his defence” (underlining mine for emphasis). He denounced the lower court for not upholding the finding of the trial court that Exhibits B and D cannot constitute res judicata as they lack the intrinsic qualities that characterise this  
F doctrine, that is, as to the sameness of parties, claims and issues in both the present and previous suits. To backup his stance in the argument he has referred to and relied on the cases of A.C.B. Plc v. Losada Nig. Ltd (1995) 7 NWLR (Pt 405) 26. Ibekwe v Maduka (1995) 4  
G NWLR (Pt 392/ 716 and Okulade v Awosanya (2000) 1 S.C. 107; (2000) 1 SCNQR 149.

It is for the foregoing submissions that the appellant has urged the court to allow the appeal.

H The respondents in their joint Brief of Argument have highlighted Suits No.HIL/5/72 and No. CA/1/112/74, that is, Exhibits B and D as being germane in this appeal. They submit that the appellant in Suit No. HIL/5/72, that is, Exhibit B has at the trial court conceded title to the Obokun of Ijeshaland and that the decision also

found against the appellant's assertion of being in possession of the land in dispute as a customary tenant. Exhibit D has confirmed the judgment as per Exhibit B on appeal. They debunk the findings of the trial court to the extent that the case for res judicata has not been made out by the respondents as per Exhibits B and D, because they are not parties nor relations of the plaintiff in the said suits. The respondents have also submitted that by Exhibits B and D the appellant is estopped from contesting the issues of being in possession of the farmland in dispute as a customary tenant paying Ishakole to Obokun of Ijeshaland. The instant suit they contend is relitigating the issues directly and conclusively settled in the judgments as per Exhibits B and D even as Exhibits B and D are judgments in rem. And they have therefore submitted that the trial court is wrong to have considered Exhibits B and D for the purposes of res judicata only as it should have gone further to uphold their case on the plea of issues estoppel by judgment. It is in this regard that they have further contended that the appellant's submission on the word "and" as used by the trial court as per the abstract adverted to above as having a special effect in the context does not hold water as such construction is bound to lead to an absurd meaning of the word "and" in context of the said clause.

Furthermore, the respondents have referred and relied on the averments in paragraphs 9, 10, and 12 of the (Amended) Statement of Claim and paragraphs 9, 10, and 14, of the Statement of Defence to underscore their contention that word "and" construed in context of the averments as per the pleadings is used conjunctively.

And finally, the court is urged to intervene to avert a miscarriage of justice otherwise arising from the misconception by the trial court of defendants/respondents' case in resisting the appellant relitigating the issues of being in possession as customary tenant of the farmland in dispute which issue has been directly and conclusively settled in the judgments as per Exhibits B and D. See *Balogun v. Akanji* (2005) 3-4 S.C, 95; (1998) 1 NWLR (Pt. 70) 301 and *Anyabiwe v. Okolo* (1998) 13 NWLR (Pt. 582) 444. The court is again urged to hold that the judgments as per Exhibits B and D have conclusively decided that the appellant is not in possession of the farmland in dispute as a customary tenant; furthermore that these

questions have been rightly considered and decided by the lower court. The respondents have therefore asked the court to dismiss the appeal for want of merit.

This is an elaborate account of the submissions of the parties in this appeal as per the Briefs and oral submissions in court.

**B I think that, against the background of the facts of this matter, the misconception of the parties' cases as accentuated in the sole issue for determination raised in this matter has clearly portrayed want of proper appreciation of the distinction between issue estoppel and res judicata although both estoppels come under one head as estoppel by judgment with a clear objective to prevent a cause of action and issues as arising from the cause of action and directly decided in a previous suit from being reopened or relitigated in a subsequent litigation by the same parties or their privies, The issue must be relevant in the subsequent proceedings that is as in the instant suit. See: *Osunrinde v Ajamogun* (1992) 6 NWLR (Pt 246) 156. It is in this respect that judgments are said to be conclusive as to cause of action and issues directly arising and decided in the cause of action as between the parties or their privies. One crucial feature of estoppel by judgment is that it has to be specifically pleaded as otherwise it cannot be relied upon in court although It is not required to be pleaded in any form.**

**F** See *Ebba v Osodo* (2000) 6 S.C. (Pt. 1) 133, *Ukaegbe v. Ugorji* (1991) 7 S.C. (Pt. II) 82; (1991) NSC (Vol. 22) 298 and *Chinwendu v. Mbamali* (1980) 3-4 S.C. 21. As the judgments as per Exhibits B and D are final decisions given by courts of competent jurisdiction **G** they are conclusive as to the cause of action and all the issues that are germane and decided in directly establishing the cause of action as between the parties or their privies. A party so affected by it is estopped as per rem judicatam from relitigating the matter all over again. The implication of the above assertion vis-a-vis the judgments **H** as per Exhibits B and D is that they are binding as to the cause of action and the issues in any subsequent proceedings in which the cause of action and the issues directly decided in the previous case are called to question as between the same parties or their privies. So

that the party is estopped from bringing a fresh suit before any court on the same case and on the same issue already pronounced upon by the court in a previous case. See: Lademiji v. Salami (1998) 4 S.C. 1; (1998) 5 NWLR (Pt. 548) 1, Igwego v. Ezeugo (1992) 6 NWLR (Pt. 249) 561, Dokubo v. Omoni (1999) 6 S.C. (Pt. I) 94; (1999) (Pt. 616) 647 and Oshodi v. Eyifunmi (2000) 7 S.C. (Pt. II) 145. **On the other hand, issue estoppel arises where an issue has been adjudicated upon by a court of competent jurisdiction and the same issue has arisen in question in a subsequent proceedings between the same parties or their privies. See Ito v. Ekpe (2000) 2 S.C. 98, Ebba v. Ogodo (2000) 6 S.C. (Pt. 1) 133, Alakija v. Abdulai (1998) 5 S.C. 1; (1998) 6 NWLR (Pt. 552) 1. There is however high authority that a party relying on issue estoppel need not prove unlike res judicata that the res, the claims and the parties are the same in the previous suit as in the subsequent proceedings. See: Ezewani v. Onwordi (1986) 4 NWLR (Pt. 33) 27.**

**Again, it is to be noted that if successfully invoked the jurisdiction of the court is ousted. However, be it noted that a party as in the instant suit, is therefore prevented from proving any facts in contradiction to earlier acts or declarations to the prejudice of the other party who has in reliance thereof has acted on it. It is in regard to the above that estoppel is a shield, and it is never a sword and so cannot be pleaded by the plaintiff; meaning in effect that it has no place in the plaintiff's Statement of Claim but in the Statement of Defence; see Ukaegbu v Ugorji (supra); see also Atolagbe v Shorun (1985) 1 NWLR 560 at 737, Adimorah v Ajifo (1988) 19 NWLR (Pt. 1) 1005.** In the instant case, both parties have pleaded the said judgments as per Exhibits B and D as constituting estoppel by judgment. The trial court however, has found the invocation of the principle of res judicata by the respondents as per Exhibits B and D albeit to oust the jurisdiction of the court over this matter as a non-starter and so inapplicable; consequently, it has entered judgment for the plaintiff, which judgment has been upturned by the lower court on appeal, hence the parties are here.

I shall come back to this question in a thrice as I have my mis-

givings on a closer scrutiny of the averments as per the pleadings and evidence in this case whether the trial court indeed the court below have misconceived in essence the defendants' pleading of Exhibits B and D as res judicata. However, for a successful plea of res judicata the law requires, I must emphasis, that the identities of the parties (or privies), the res, that is, the subject matter of the litigation and claim as well as the issues and the parties in both the present and previous actions have to be the same otherwise the plea is not tenable. See Ezeanya v Okeke (1995) 4 NWLR (Pt. 388) 142 at 161 per Iguh, JSC, Balogun v. Adejobi (supra), Faleye v. Otapo (supra) and Odutola v. Oderinde and Ors. (2004) supra.

Having outlined above the law and guiding principles on estoppel by judgment in relation to Exhibits A, B and D, it must be noted that the parties to this suit have pleaded these judgments in paragraphs 9, 10 and 12 of the (Amended) Statement of Claim and paragraphs 8, 9 and 14 of the Statement of Defence as follows:-

At page 22 of the record, the plaintiff has pleaded thus:-

"9. The plaintiff avers that one Oyekanmi instituted an action against the plaintiff in the Customary Court Grade 'A' Ilesa "claiming ownership and titles hip to the farmland which case went on appeal to Ilesa court in Suit HIL/9A/71: Ikotun v. Adu: and it went in favour of the plaintiff.

10. The plaintiff avers that Owa Obokun, Oba Peter Agunlejika II also brought an action against the plaintiff claiming:-

(i) Declaration of title under Native Law and Custom to a piece or parcel of farmland known and called Erinre situate lying and being at Iferindo;

(ii) N400.00 damages for trespass: and

(iii) Injunction restraining the defendant, his servant and or agent from entering into it dealing in any way with the said farmland.

The plaintiff pleads and will rely on the judgment in:-

(a) HIL/9A/71: Ikotun v. Adu: and

(b) HIL/5/72: Agunlejika v. Ikotun."

Pleaded in paragraphs (9) and (10) above

At pages 6 and 7 of the record the defendants have pleaded as follows:-

"8. The defendant was then presented with three court judg-

*ments in respect of the land in dispute between the plaintiff and late Oyekanmi Adu and the plaintiff against Oba Peter Agunlejika.*

9. The judgment are:

(a) *HIL/94/71; Ikotun vs. Adu*

(b) *HIL/5/72; Agunlejika v. Ikotun.*

(c) *CIL/112/74; Yekini Ikotun v. Oba Peter Agunlejika.* B

14. The defendant will contend at the trial that the doctrine of res judicata will operate against the plaintiff from raising the issue of title, tenancy or possession by virtue of the judgment in *Suits HIL/5/72; Oba Peter Agunlejika v. Yekini Ikotun. CAW/112/74; Yekini Ikotun v. Oba Peter Agunlejika.*” C

The foregoing averments are clear and unambiguous as well as the evidence tendered in support. ***I have here adverted to the distinction between estoppel and res judicata. When therefore a party as in the instant suit pleads judgments as estoppel, what he is saying in essence is that the court should take the judgment into consideration in considering the totality of his case before the court.*** D

See *Ukaegbu v Ugorji* (1991) 7 S.C. (Pt. II) 82; (1991) 6 NWLR (Pt. 196) 127. It is settled law that only a defendant or plaintiff in reply to a defendant's pleading in defence to an issue raised therein can plead res judicata and if I may repeat, it operates not only against the party whom it affects but also ousts the jurisdiction of the court. The party affected cannot institute a fresh action before the court. E

These averments leave no one in any doubt that both parties to this suit have founded their cases on the judgments tendered as Exhibits B and D as estoppels by judgment. In view of the foregoing, I digress to expatiate in some detail on a few common rules of pleading, that is to say, in so far as I have perceived them pertinent here, but not before observing that the characterization of estoppel as a rule of evidence or substantive law - (which on either side there is high authority) is neither here nor there in my discussion of this matter. And so, in this regard I have not given any consideration as to whether estoppel is a cause of action or not. However, the two critical exhibits specifically pleaded by the parties in this regard in this suit - that is, Exhibits B and D have been pleaded as facts relevant to facts in issue and not as res judicata as such, and I so hold. This finding has F

willy-nilly collapsed the appellant's case.

More definitively, Exhibit A is the judgment as per Suit No. HIL/9A/71 in which, in sum, the 2nd respondent here has claimed title to the farmland in dispute, trespass and injunction against the appellant; the claim was dismissed. Exhibit B is the judgment in Suit B No: HIL/5/72: Oba Peter Agunlejika v. Ikotun (that is the appellant in the instant suit) wherein the plaintiff has claimed title to the farmland in dispute, trespass and injunction. The title to the farmland having been conceded by the appellant in the instant suit, the trial court C rightly granted title to Oba Agunlejika and dismissed the claims for trespass and injunction; Exhibit D on the other hand, is the judgment on appeal of the decision as per Exhibit B. In dismissing the appeal as per Exhibit D the appellate court pronounced as to the effect that the defendant is neither a customary tenant to the plaintiff nor in possession of the land in dispute. These issues are the burning issues in the instant suit. This is so as the plaintiff in the instant suit as set forth herein is relitigating the issues of possession of the farmland in dispute as a customary tenant; this time against the defendants/respondents notwithstanding the conclusive findings that he is not in possession of the land in dispute as a customary tenant and the respondents have challenged this suit on that premise. The parties in any event are bound by their pleadings. See: Ogiamien v Ogiamien (1967) NMLR 295 and NIPC and Thompson Organisation Ltd. (1969) NWLR 99. And it appears to me having scrutinized the averments of the plaintiff as per particularly paragraphs 9, 10 and 12 and of the (Amended) Statement of Claim and as per paragraphs 8, 9 and 14 of the defendants' Statement of Defence and I have come to the firm view that the facts the parties have expressly and even moreso explicitly averred in their respective pleadings have clearly raised Exhibits B and D as facts relevant to facts in issues and not res judicata simpliciter. After all, worthy of note is the submission that the parties are not the same in the claim as per Exhibits B and D and the instant case and so res judicata cannot avail them.

H However, the view of the court below with regard to paragraphs 8, 9 and 14 of the defence and which has been challenged by the appellant is that "it is clear that the purpose of Exhibits B and D extended further than for that of res judicata ..... and that the



learned trial Judge was wrong to have considered Exhibits B and D for the purpose of res judicata only.....” In conclusion thereof, the lower court rightly in my view held at p. 106 LL 33-37 of the record as follows:-

“..... *I am of the view that the Suit HIL/5/72 confirmed on appeal the issue of ownership, tenancy and possession which had been resolved against the respondent and which I say can therefore not be reopened or relitigated again.*”<sup>B</sup>

And I uphold entirely this finding, being well grounded on the facts of this case. There would be an obvious failure of justice not to interfere with the judgment of the trial court in the circumstances. The lower court rightly intervened.<sup>C</sup>

I have no doubt in my mind that both parties to this suit having pleaded the judgment tendered as per Exhibits B and D that effect should be given to the judgments in line with the provisions of Section 55(1) of the Evidence Act. 1990; *a fortiori*, in situations as here where the estoppel by judgment has been specifically pleaded; therefore, the appellant’s contention on this issue as sustained by the trial court has ignored the fact that both parties here pleaded these judgments that is Exhibits A, B and D and in my view as facts relevant to the facts in issue that is to say, the issues as to possession and tenancy of the land in dispute. I have referred to and relied on *Ezewani v Onwordi* (1986) NWLR (Pt.33) 27, to support my reasoning that to rely on issue estoppel a party is not required to prove that the subject matter, claims and parties are identical. ***I can therefore find nothing amiss in the defendants/respondents resisting the plaintiff/appellant’s claim here by pleading Exhibits A, B and D; even though they are not parties to the said action.***<sup>E</sup><sup>F</sup>

Although without deciding the point quite clearly on the facts of this matter, the plaintiff, Owa Obokun of Ijeshaland in Suit No HIL/5/72, as per Exhibit B confirmed on appeal by Exhibit D and the respondents in the instant case have privity of interest in respect of the land in dispute and so as privies of the said plaintiff, that is, Owa Obokun of Ijeshaland the defendants/respondents are capable of pleading estoppel per rem judicatam against the plaintiff/ appellant if I may repeat on the facts of this case and they are capable in my humble view of sustaining the said plea. However, I say no more of<sup>G</sup><sup>H</sup>

this as counsel's attention has not be drawn to the issue for their address.

However, ***the purpose of Section 55 (1) of the Evidence Act, that is to say is to enable judgments relevant to facts in issue in an action to be so pleaded. Section 55(1) provides:-***

B ***“(1) if a judgment is not pleaded by way of estoppel it is as between parties and privies deemed to be a relevant fact, wherever any matter, which was, or might have been decided in the action in which it was given, is in issue, or is deemed to be relevant to the issue, in any subsequent proceedings.***

C ***(2) such a judgment is conclusive proof of the facts which it decides, or might have decided, if the party who gives evidence of it had no opportunity of pleading it as an estoppel.”***

D I have made it clear here that the obvious purpose of the plaintiff/appellant pleading Exhibit A is none other than to bring out the fact that the 2nd defendant/respondent lost his claim comprising of title, possession and tenancy of the land in dispute against the plaintiff/appellant. Exhibits B and D have been pleaded by the defendants/respondents simply to prevent the plaintiff/appellant here from  
E reopening the issues of possession and customary tenancy of the land in dispute which the plaintiff/ appellant here as defendant lost to Owa Obokun of Ijeshaland, Exhibit B and D, have pronounced conclusively therein that the plaintiff/appellant is neither in possession nor a  
F customary tenant of the land in dispute. The fundamental principle for not allowing relitigation of a matter as in the instant one as being subsequent proceeding of issues or matters conclusively settled as between the parties or their privies in the previous case as per Exhibits B and D lies in the doctrine of interest reipublicae ut sit finis litium  
G which is well embedded in our law as per the case of Brown v. Dean & Anor. (1910) AC 37. Therefore, I hold that the question of opening by relitigation of the issues of possession and tenancy of the land in dispute in the instant suit is not sustainable. Again, these issues that is as to possession and tenancy of the  
H ***land in dispute having been conclusively settled against the appellant as regards the land in dispute as per Exhibits B and D and relevant to the facts in issue in the instant suit clearly come within the ambit of the provisions of Section 55 of the***

***Evidence Act, 1990. Clearly, therefore, there is no need straining the words of the provision to come to the obvious conclusion to the effect that this case falls squarely within the contemplation of Section 55 (supra). And so, the appellant is estopped as per Section 55 (2) (supra), from reopening by litigating the aforesaid issues now put in issue in this suit.***

I must all the same, add that based on the findings made in this matter the instant suit seem to run foul of the law as it raises even then a more serious question of abuse of court process however collateral its attack in this regard of the previous case as per Exhibit B confirmed by Exhibit D. I just wanted to highlight this point and leave it at that; again as counsel's attention has not been drawn to this issue for their address. I therefore say no more.

In the result, I resolve the sole issue in this appeal against the appellant. The lower court rightly upturned the judgment of the trial court as the plaintiff/appellant is not in possession of the land in dispute as customary tenant; I affirm its decision. The justice of this matter so demands. This appeal is devoid of any merit whatsoever and I would dismiss it and I dismiss it in its entirety with costs to the respondents assessed and fixed at N50,000.00.

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### **KATSINA-ALU JSC**

I have had the advantage of reading in draft, the judgment of my learned brother Chukwuma-Eneh, JSC. I agree with it and for the reasons he gives, I too dismiss the appeal with N50,000.00 costs in favour of the respondents.

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### **AKINTAN JSC**

The dispute in this case was over a parcel of a farmland at Erinro via Iperindo in Atakunmosa Local Government of Oyo State. The appellant, as plaintiff, instituted the action at Ilesha High Court in which he claimed a number of declaratory reliefs and injunction restraining the defendants from interfering with the plaintiff's enjoyment of the farm land. Pleadings were filed and exchanged and the defendant pleaded and relied on three judgments which were later

admitted at the trial as Exhibits A, B and C respectively. At the conclusion of the trial, the learned trial Judge held that *res judicata* was not made out in respect of the cases in that the plaintiff was not a party nor was he a relation of Oba Agunlejika who was the plaintiff therein. Judgment was therefore entered in favour of the plaintiff.

B On appeal, the Court of Appeal allowed the appeal on the ground that one of the judgments relied on, Exhibit D, as in fact a judgment in rem while Exhibit B was conclusive proof that Yekini Ikotun, the original appellant, was neither the owner of the disputed C land nor in possession or tenant on the land. The present appeal is against that judgment.

The main issue canvassed in this court is whether the court below was right in holding that the trial court considered Exhibits B and D for the purpose of *res judicata* only? The issue has been fully D discussed in the leading judgment written by my learned brother, Chukwuma Eneh, JSC., the draft of which I have read, I entirely agree with his reasoning and conclusion and I therefore agree that there is no merit in the appeal and I accordingly dismiss the appeal with costs as assessed in the leading judgment.

E

### MOHAMMED JSC

I have had the opportunity of reading in draft the judgment F just delivered by my learned brother, Chukwuma-Eneh, JSC. I agree with him and I adopt his reasons and conclusions as mine in dismissing this appeal which has no merit whatsoever. I also award N50,000.00 costs to the respondents.

G

### ONNOGHEN JSC

The appellant filed Suit No. HIL 42/90, as plaintiff in the High Court of Oyo State holden at Ilesha claiming the following reliefs: -

H “(1) Declaration that the plaintiff is the person in possession of the farmland situate lying and being at Erinro via Iperindo in Atakunmosa Local Government of Oyo State which farmland is bounded as follows:-

On the first side by Erinro Stream;

*On the second side by Oni River;  
On the third side by Aloposo Stream;  
On the fourth side by Obembe Farmland.*

*(2) Declaration that the defendant cannot interfere with the plaintiff's enjoyment of the farmland or the enjoyment of any person claiming through the plaintiff.* B

*(3) Injunction restraining the defendant, his servants, agents and/or privies from interfering with the plaintiff's enjoyment of the farmland or threatening, harassment or embarrassing the plaintiff's tenants or any person claiming through the plaintiff any portion of the said farmland; against the defendant who is the respondent in the appeal.* C

In paragraphs 9, 10, 11 and 12 of the Statement of Claim the plaintiff pleaded as follows:-

*"(9) The plaintiff avers that one Oyekanmi instituted an action D against the plaintiff at the Customary Court Grade "A" Ilesa "claiming ownership and titleship of the farmland" which case went on appeal to Ilesa High Court in HIL/9A/71: Ikotun vs Adu: and it went in favour of the plaintiff.*

*(10) The plaintiff avers that Owa Obokun Oba Peter Agunlejika E II also brought an action against the plaintiff claiming:-*

??? *i. Declaration of title under Native Law and Custom to a piece or parcel of farmland known and called Erinro situate, lying and being at Iperindo.*

*ii. N400.00 (Four Hundred Naira) damages for trespass: and;* F

??? *iii Injunction restraining the defendant, his servant and or agent from entering into it dealing in any way with the said farmland.'*

*In Suit HIL/5/72: Agunlejika II v. Ikotun*

??? *(11) The plaintiff avers that declaration under Native Law and Custom was granted Owa Obokun, but the claim for trespass with injunction was dismissed.*

*(12) The plaintiff pleads and will rely on the judgments in-*

*a. HIL/9A/71; Ikotun v. Adu; and  
b. HIL/5/72; Agunlejika v. Ikotun pleaded in paragraphs 9 and H 10 above."*

On the other hand, the defendant pleaded in paragraphs 14 and 15 of the Statement of Defence as follows:-

“14. The defendant will contend at the trial that the doctrine of res judicata will operate against the plaintiff from raising the issue of title, trespass or possession by virtue of the judgments in Suits HIL/5/72: *Oba Agunlejika v. Yekini Ikotun* and CAW/112/74, *Yekini Ikotun v. Oba Peter Agunlejika*.

B 15. The defendant avers that the ancestors of late Oyekanmi Adu not only were in possession of the land in dispute by a grant from Owa of Ileshaland, but that late Oyekanmi Adu was in possession as against the plaintiff and his family has succeeded him in possession.”

C In paragraph 6 of the Reply to Statement of Defence, the plaintiff pleaded thus:-

“ 16. The plaintiff avers that the plea of res judicata is not sustainable by the defendant as plaintiff’s claim against the defendant is against him personally and that he was in no way connected with cases listed in paragraph 9 of the Statement of Defence.”

At the trial Suits Nos.9A/71, HIL/5/72 and CAW/112/74 were tendered, admitted and marked as Exhibits A, B, & D respectively.

E The 2nd respondent, a son of Oyekanmi Adu was, in the course of the proceedings at the trial court joined as the 2nd defendant while by paragraph 13 of the Statement of the Defence, 1st respondent stated that he was defending the action on behalf of the “family of late Oyekanmi Adu” which averment was testified to by the 2nd respondent in his evidence at page 31 of the record.

F In its judgment the trial court held that the defence of res judicata was not made out by the 2nd respondent because in Exhibits B & D, the 2nd respondent was not a party nor is he a relation of Oba Agunlejika who was the plaintiff therein and went on further to hold that the 2nd defendant lost his claim of ownership in Exhibits A on appeal. The court therefore entered judgment in favour of the plaintiff/appellant resulting in appeal to the Court of Appeal holden at Ibadan in appeal No.CA/1/30/93, where the main issue for determination was whether the trial court was right in considering Exhibits H B&D on the basis res judicata only when in the said exhibits the issue as to who is in possession of the farmland in issue as customary tenant paying Ishakole was determined against Yekini Ikotun the plaintiff/respondent before that court.

The Court of Appeal in considering the issue held at page 103 of the record thus:-

*"It is clear that the purpose of Exhibits B&D extended further than for the res Judicata ..... And that the learned trial Judge was wrong to have considered Exhibits B&D for the purpose of res judicata only."* B

The court went further to hold that Exhibit D was a judgment in rem and that Exhibit B was conclusive proof that Yekini Ikotun, original appellant in the appeal, was neither the owner of the land in dispute nor in possession or a tenant at page 107 of the record and allowed the appeal. It is against that judgment that the appellant has appealed to this court, the issue for the determination of which appeal has been formulated by learned counsel for the appellant, Babatunde A. Aiku, Esq., in the appellant's Brief of Argument filed on 21/7/05 and adopted in argument of the appeal as follows:- D

*"Whether the lower court was right in holding that the trial court considered Exhibits "B" & "D" for the purpose of res judicata only?."*

In arguing the issue, learned counsel for the appellant submitted that the lower court was in error when it held that the trial court considered Exhibits B & D for the purpose of res judicata only that page 107 of the record that the suit No. "HIL/5/72, is conclusive proof that the responder was neither the owner of the land in dispute, nor in possession of it or a tenant" and that by virtue of the judgment in Exhibit D the respondent (appellant in this court) was estopped from opening the matter again by instituting the instant case as the judgment in Exhibits D is in rem and the claims in that case and the instant one, are the same when the respondents in this appeal were not the parties to Exhibits B & D and the claims therein are not the same with the claims in the instant case; that it is not correct to say that the trial court considered Exhibits E & D for the purpose of res judicate only as held by the lower court particularly as the lower court failed to consider the plain and ordinary meaning of the word "and" in its conjunctive sense as used by the trial court page 38 lines 18-19 there of which word, if properly considered, shows that the trial court did not consider Exhibits B&D for the purpose of res judicata only. At this stage I consider it important to H

reproduce the sentence at pages 18 & 19 of the record which contains the now controversial word, “and”. It is as follows:-

*“2nd defendant relied heavily on Exhibits A.B & 1) and res judicata as his defence.”*

(Underlining mine for emphasis)

B It is the view of the learned counsel for the appellant that the above statement meant that the trial court held that apart from relying heavily on Exhibit A, B & D, the 2nd defendant also or in addition relied on res judicata !!! And urged the court to hold that the trial court thereby considered Exhibits B&D in their entirety and not for the purpose of res judicata only. Learned counsel then urged the court to resolve the issue in favour of the appellant and allow the appeal.

On the other hand, learned senior counsel for the respondents N.O.O.OKE, Esq., SAN., in the respondents’ Brief of Argument deemed filed on 3/10/07, submitted that Exhibits B& D were considered by the learned trial Judge for the purpose of res judicata only as found and held by the lower court and that the word “and” as used by the trial Judge does not have any special effect contrary to the submission of counsel for the appellant.

Learned senior counsel then referred the court to the pleadings of the respondent in paragraph 14 of the Statement of Defence, earlier reproduced in this judgment and submitted that the special effect of the word “and” as attributed to it by counsel for the appellant has no support in the pleading of the respondents and that having regard to the said paragraph 14 the word “and” can equally be interpreted to mean “or”. It is the further submission of learned senior counsel that if the learned trial Judge has considered Exhibits B&D for the purpose of not only res judicata but issues decided therein, it would have come to the conclusion that the appellant could not succeed as the issue of tenancy, and possession had been decided in Exhibits B&D against the appellant and that the lower court was justified in interfering with that finding and urged the court to resolve the issue against the appellant and dismiss the appeal.

I had earlier in the judgment reproduced paragraphs 9,10,11 and 12 of the Statement of Claim where the judgments - Exhibits A, B & D were pleaded and relied upon by the appellant as fact relevant



to the fact in issue. I have also reproduced paragraph 14 of the Statement of Defence in which the respondents pleaded the relevant judgments as res judicata on the issue of “title, tenancy or possession”.

It is my considered view that when one looks closely at the above paragraphs of the pleadings, the word “and” as used by the learned trial Judge at page 38 lines 18 & 19 of the record, earlier reproduced in the judgment has no special conjunctive effect attributed to it by learned counsel for the appellant. In fact, I agree with learned senior counsel for the respondents that the word “and” as used therein can be interpreted to mean “or” having regard to the pleadings in paragraph 14 of the Statement of Defence. The interpretation of the word “and” assigned by counsel for the appellant, if adopted will destroy the sense in which the learned trial Judge used same in the sentence in issue. I hold the further view, that if the learned trial Judge had used the word “and” in the sense argued by learned counsel for the appellant, he would have seen that the issues decided in the judgments in question and as pleaded by the respondents in paragraph 14 of the Statement of Defence extended beyond the doctrine of res judicata as the issue of tenancy and possession had been decided in Exhibit B & D against the appellant. I therefore have no hesitation in agreeing with the lower court as stated at page 106 of the record that “As such I am of the view that suit No.HIL/5/75 confirmed on appeal the issue of ownership, tenancy and possession which had been resolved against the respondent and which I say can therefore not be re-opened or relitigated again.....” and at page 107 as follows: -

*“I think quite clearly Suit HIL/5/72, is conclusive proof that the respondent was neither the owner of the land in dispute, nor in possession of it nor, a tenant.....”*

The above findings cannot be faulted. The exhibits in question though not constituting res judicata as found and held by the trial court on account of the parties thereto not being the same, they nonetheless held emphatically that the appellant before this court is neither the owner, tenant or in possession of the land in dispute and as such cannot maintain the present action against the respondents. In conclusion, I agree with the reasoning and conclusion of my learned brother, Chukwuma-Ench, JSC., that the appeal is without merit and

should be dismissed. I therefore order accordingly and abide by the consequential orders contained in the said leading judgment including the order as to costs.

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