

SUPREME COURT OF NIGERIA
20TH MARCH, 2009 SC. 132/2003
CORAM:- N. TOBI, G. A. OGUNTADE, I. F. OGBUAGU,
I. T. MUHAMMAD, J. O. OGBE, JJSC

MRS. RONKE OMIYALE APPELLANT
AND

1. MOBOLAJI MACAULAY
2. MRS. HELEN CAROLINE
OLAYINKA RAWA
3. MRS. GRACE ENIOLA RESPONDENTS
ELEGBE
4. OLANREWAJU LAYINKA
OLATUNJI MACAULAY
5. YETUNDE MACAULAY

ESTOPPEL - Res judicata - Applicability of - As parties in the suits in which the earlier judgments were given - Are not same as in the instant suit - The plea is inapplicable (H1)

ESTOPPEL - Res judicata - Ingredients - Privies to parties - Applicability - Respondents did not acquire title from plaintiffs in earlier suits - Therefore they could not be privies to the said plaintiffs (H2)

ESTOPPEL - Res judicata - Privity of estate - A prior purchaser of land such as respondents - Cannot be estopped as being privy in estate - By a judgment obtained in an action against vendor - Commenced after the purchase (H3)

LAND LAW - Title - Validity - Subsequent grant by a common grantor - By the prior sale to respondent's predecessor-in-title - The Iyanru family no longer had interest in the land - To pass to the appellant by the subsequent grant (H4)

APPEALS - Issues - Usefulness of - It is apparent from the pleadings of the parties - That identity of the land in dispute was a non-issue - As both parties knew the land (H5)

ESTOPPEL - Standing by - Applicability - It is not the case of appel-

lant that respondents stood by - When the earlier suits were being tried - So the doctrine of standing by is inapplicable (H6)

LAND LAW - Title - Certificate of occupancy - Evidential value - If on the state of the law a certificate of occupancy lacked evidential value - To prove title being claimed - The court has a duty to say so (H7)

FACTS

The plaintiffs/respondents sued the defendant/appellant at the High Court of Lagos State claiming declaration of title, damages for trespass and injunction. After hearing, the learned trial judge dismissed the case of the respondents. He held that they failed to prove their case. Dissatisfied, respondents appealed to the Court of Appeal which allowed the appeal, set aside the judgment of the trial court and gave judgment to the respondents as per their claim.

Aggrieved, the appellant has brought this appeal against that judgment of the Court of Appeal contending, inter-alia, that exhibits M and M1 being previous judgments, were binding on the respondents to constitute estoppel per rem judicatam. It is noteworthy that the suits resulting in exhibits M and M1 were both subsequent to the acquisition of title by the respondents. More so the respondents were not parties to those suits.

ISSUES FOR DETERMINATION

“ 1. Whether the lower court was right in holding that exhibits M and M1 were not binding on the respondents to constitute estoppel per rem (sic) judicata ”

2. Whether the lower court did not misdirect itself on the facts that the location and identity of the land in dispute were not in doubt to justify its holding that the land purchased by Somefun exhibit ‘C’ falls within the land in exhibit C2.

3. Whether from the facts of this case as contained in the printed record, it can be said that the appellants’ evidence as to whose title to the land in dispute lay in contradictory as against that of the Respondents to justify the holding of the lower court that the appellant has not proved a better title to the land in dispute?

4. Whether the lower court was right in raising and resolving suo motu, the issue of the validity of the Certificate of Occupancy held by the appellant in respect of the land in dispute and holding

that the said Certificate of Occupancy is null and void.

5. *Whether given the totality of the evidence adduced at the trial court, the award of N10,000.00 against the appellant as damages for trespass can be justified in law?*"

HELD (Unanimously dismissing the appeal per **OGUNTADE JSC**)
Res judicata - Applicability of

1. It seems to me that the court below was right in its views and the trial court clearly wrong. In *Nwaneri v. Oruwa* [1959] 4 F.S.C. 132, Abbot A. C.J.F. observed:

"It is well known that before this doctrine can operate, it must be shown that the parties, issues and subject matter were the same in the previous case as those in the action in which the plea of res judicata is raised."

It is apparent that the parties in the suits in which the judgments exhibits M and M1 were given were not the same as in the current proceedings. (p. 664 H)

Res judicata - Ingredients

2. The appellant is contending that the respondents were the privies of the parties in exhibits M and M1.

It is worth stating here that the respondents did not acquire title from the plaintiffs in exhibits M and M1. The Iyanru family was not a party to the two cases. The respondents could not therefore be privies to the plaintiffs in exhibits M and M1. (pp. 665 C/666 E)

Res judicata - Privy of estate

3. It is settled law that a plea of *estoppel per rem judicatam* must be mutually enforceable.

The principle was applied by this court in *Talabi V Adeseye* (1972) 8-7 S.C. 20 where this Court per Coker JSC said:

"Prima Facie, a prior purchaser of land cannot be estopped as being privy in estate by a judgment obtained in an action against the vendor commenced after the purchase. In Spencer-Bower on Res Judicata (Second Edition) at p.210, the following statement of law appears:-

'where privy of estate is set up as the foundation of estoppel per rem Judicata, the title relied on to establish such privy must

have arisen after the judgment on which res judicata is based, or at least after the commencement of the proceedings in the course of which judgment was given’.”

Clearly therefore, as the title of the respondents had not arisen after exhibits M and MI, a plea of estoppel *per rem judicatam* could not be successfully raised against the respondents based on exhibits M and MI. (pp. 666 H/667 A)

Title - Validity - Subsequent grant

4. Appellant also relied on the title of Oniyanru upon which the respondents also relied. But whereas the respondents traced the source of their title back to 1911 when the Iyanru family sold the land in dispute to Somefun, the appellant on the other hand only acquired her title from the same family vide a Deed of gift made on 16-5-80 and Registered as No.69 at page 69 in volume 1780 in the Lagos Lands Registry. The appellant also pleaded that she was put in possession of the land in dispute in 1972. The result is that the respondents acquired their title from the Iyanru family long before the appellant did. The Iyanru family by the prior sale of the land to the respondents’ predecessor-in-title-in 1911 no longer had an interest in the land in dispute which could be passed to the appellant in 1972 or 1980. (p. 667 F)

APPEALS - Issues - Usefulness of

5. Appellant’s issue 2 raises issue as to the identity of the land in dispute. It seems to me that guided by the pleadings of parties upon which the suit was tried, the identity of the land in dispute was a non-issue.

It is apparent from the extracts of the parties pleadings reproduced above that both parties knew the land in dispute and joined issue thereupon. I decide issue 2 against the appellant. (pp. 668 D/669 B)

ESTOPPEL - Standing by - Applicability

6. Still on the issue of *res judicata*, it is apposite to mention that it was not appellant’s case that when the hearing in the suits which led to the judgments in exhibits M and MI were going on, the respondents knew about it and allowed their battle to be fought on their behalf. If

that was the situation, the respondents might be held bound by the judgments exhibits M and M1.

The appellant did not fight the case at the trial court on the basis that the respondents stood by and allowed other persons to fight on their behalf the suits upon which the judgments exhibits M and M1 were given. (pp. 669 E/670 B) B

Title - Certificate of occupancy - Evidential value

7. The appellant's counsel raises issue as to whether the court below was right in pronouncing the land certificate granted to the appellant by the Lagos State Government as null and void. I think that the appellant's counsel has not adverted his mind to the context in which the court below held that exhibit K, the certificate of occupancy, issued to the appellant by the Lagos State Government, when the interest of the respondents in the land subsisted was invalid. C

The appellant had tendered exhibit 'K' as an additional proof of the title which she asserted. If, on the state of the law, the said exhibit 'K' has no evidential value, it was the duty of the court below to say so. I do not therefore see that the court below was wrong in doing what was clearly its duty. I decide issue 4 against the appellant. D
(p. 670 C/671 B) E

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

1. The doctrine of priority applies F

In respect of Exhibit "K" of the Appellant, it is clear to me that from the facts I have stated above, at best, it was/is a competing document of title to Exhibit "C", C1 and C2. It is now firmly settled that he who is first in time, takes priority. In other words, where two or more competing documents of title upon which parties to a land dispute, rely for their claim of title to such land which originated from a common grantor, the doctrine of priorities applies. (p. 676 H) G

2. Registration does not cure defect in C of O or fraudulent instrument H

It need be stressed or always borne in mind as this is also settled, that the registration of a Certificate of Occupancy (as was done by the Appellant), does not and cannot, cure or validate any irregularities in

its procurement. This is why there is the need for a person seeking such registration, to make prior enquiries and search. But invariably, regrettably and unfortunately, this will not be done by a desperate party who wants registration of his/her “title” Deed and grant of a Certificate of Occupancy, by all means. I sound this note of warning or can I say, free advise because, the mere registration, does not and will not, validate spurious or fraudulent instrument of title or a transfer or grant which in law, patently remains, invalid or ineffective.
(p. 679 A)

C **REPRESENTATION**

Mr. Ebun-Oluwa Adegboruwa for the Appellant
Jean Chiazor Anishere (Mrs.) for the Respondent.

D **CASES REFERRED TO**

Yeye v. Olabode (1974) 10 S.C. 209 at 231
Shola Coker v Sanyaolu (1976) 9 & 10 S.C. 203
Fadiore v Gbadebo (1978) 3 S.C. 219
Adesina Oke V. Adeloye (1986) 1 S.C. 422
E Odievwedjie v. Echanokpe (1978) 1 NWLR (pt.52) 633
Coker v. Sanyaolu (1976) 9-10 S. C. 203
Akpan v. Utin (1996) 7 NWLR (Pt.108) 164
Adeleke v. Akanji (1994) 4 NWLR (Pt.341) 715
F Mercantile Investment and General Trust Company v. River Plate Trust Loan and Agency Company (1894) 1 Ch, D.578 at p. 595

STATUTE REFERRED TO

Land Use Act, s. 34

G **LEAD JUDGMENT BY OGUNTADE JSC**

The respondents were the plaintiffs at the Ikeja High Court of Lagos State. They claimed against the appellant, as the defendant, the following reliefs:-

H “i. A declaration that the plaintiffs are entitled to the grant of a statutory right of occupancy in respect of the plan drawn by A. O. Pedro dated 1st September, 1931 attached to the Deed of conveyance dated 20th June, 1932 registered as No. 11 at page 11 in volume 340 of the Register of Deeds kept at Lagos.

ii. N60,000.00 damages for trespass on the said land.

iii. Injunction restraining the defendant, her agents, servants and privies from continuing with the trespass on the said land.”

The parties filed and exchanged pleadings after which the suit was tried by Desalu J. On 19-06-90, the trial judge in his judgment dismissed the respondents’ case. He held that the evidence called by the respondents was insufficient to entitle them to the reliefs they sought. The respondents were dissatisfied and they brought an appeal against the judgment before the Court of Appeal, Lagos Division (hereinafter called ‘the court below’). On 23-1-97, the court below allowed the respondents’ appeal. Judgment was given in favour of the respondents on their claims. The present appellant was dissatisfied with the judgment of the court below. He has brought this final appeal against it. In the appellant’s brief filed before this Court, the issues for determination in the appeal were identified as the following:

“ 1. Whether the lower court was right in holding that exhibits M and M1 were not binding on the respondents to constitute estoppel per rem (sic) judicata” Ground 3.

2. Whether the lower court did not misdirect itself on the facts that the location and identity of the land in dispute were not in doubt to justify its holding that the land purchased by Somefun exhibit ‘C’ falls within the land in exhibit C2- Grounds 1 & 4.’

3. Whether from the facts of this case as contained in the printed record, it can be said that the appellants’ evidence as to whose title to the land in dispute lay in contradictory as against that of the Respondents to justify the holding of the lower court that the appellant has not proved a better title to the land in dispute? Grounds 2 and 5.

4. Whether the lower court was right in raising and resolving suo motu, the issue of the validity of the Certificate of Occupancy held by the appellant in respect of the land in dispute and holding that the said Certificate of Occupancy is null and void. Ground 7.

5. Whether given the totality of the evidence adduced at the trial court, the award of N10,000.00 against the appellant as damages for trespass can be justified in law? Ground 6 & 8.”

The respondents formulated two issues of their own for determination. The appellant’s issue are more germane. I shall be guided in this judgment by the appellant’s issues. This was a dispute about

ownership of land, and it is desirable, for an appreciation of the issues as discussed in this judgment that I briefly discuss the facts relied upon by the parties in support of their contrasting standpoints before the trial court.

In their Amended Statement of Claim, the respondents pleaded that the land in dispute originally belonged to Iyanru Family who had sold the land to one Somefun. The said Somefun mortgaged the land for a loan. He could not repay the loan. The mortgagees then sold the land to one Samuel Rowland Latunji Macaulay who was the respondents' grandfather and who by his last WILL vested the land in the respondents. Put simply, the respondents relied on the title said to be in the Iyanru Family at the beginning.

The appellant also traced her title to the same Iyanru Family as the respondents did although she referred to the same Iyanru Family as Akeja Oniyanru Chieftaincy Family. She relied on a deed of gift from the said family dated 16th May, 1980. In addition, the appellant relied on two suits ID/292/81 and ID/349/83 both decided at the Ikeja High Court. It was pleaded that one Gilbert Oyenola Ogunro had instituted the first of the suits against one Alhaji Jimoh Arowolo and 3 ors. and that judgment was delivered against the said Gilbert Oyenola Ogunro. In the second suit, one Lydia Thomson and another person were said to have instituted a suit against the same Alhaji Arowolo and further, that judgment was given therein against the plaintiffs Lydia Thomson and another. These judgments were relied upon as showing that one Olarokun Family had title in the land in dispute which was superior to that of Iyanru Family. Following these judgments, the appellant pleaded that in order to perfect her title she paid N15,000.00 to Olarokun Family on 3-4-77.

There is a measure of ambivalence in the root of title which the appellant pleaded. Whilst in one breadth, she pleaded Oniyanru Family as her root of title, in another she pleaded that she paid N15,000.00 to Olarokun Family following the two suits in which Gilbert Oyenola Ogunro and Lydia Thomson were the plaintiffs. Surprisingly however, she did not plead facts to reveal how Olarokun Family came to own the land. In other words, she jettisoned the source of title of the Oniyanru which she also pleaded.

Now to the issues for determination in this appeal which I intend to consider serially. The first issue for determination is a chal-

lence to the standpoint of the court below that exhibits M and MI tendered by the appellants to support a plea of estoppel per *res judicata* were not given consideration by the court below. It is helpful to know that exhibits M and MI were judgments given by the Ikeja High Court in two cases. Exhibit MI relates to a suit filed by Gilbert Oyenola Ogunro against Jimoh Arowolo. In the suit Ogunro had been relying on a title said to be derived from Iyanru family whilst Arowolo relied on the title from Olarokun family. Judgment was given against Ogunro by the High Court. The consequence was that the title of Olarokun family was preferred to that of the Iyanru family. Similarly in exhibit MI, the Plaintiff Lydia Thomson had in reliance on the title of Iyanru family brought a suit against Jimoh Arowolo. Judgment was given against Lydia Thomson. Thus, once again the title of Olarokun was upheld as against that of Iyanru. These judgments were given on 6/06/86 and 1/10/83 respectively. It was appellant's case that following these judgments, she paid money on 3/4/77 to acquire, as it were, the interest of Olarokun family.

It was on the basis of the interest acquired by the appellant from the Olarokun family that she raised a plea of *estoppel per res judicata* against the respondents. The trial court in its judgment upheld the plea at page 241 of the record in these words:

"I prefer and believe the testimony of DW5; Dawodu; that the land in Exhibit 'P' belonged to Olarokun family as per judgment of court and that the land in dispute forms portion of it.

In the light of the two judgments exhibits 'M' and 'MI', I hold the view that as between the Oniyanru family and the Olarokun family, the Olarokun family has a better and more supportive (sic) to all that the (sic) vast area of land including the land in dispute.

The plaintiffs have therefore not satisfied me that they had a better title to the land in dispute than the Defendant; (sic) more when in a case of this nature it is incumbent on the Plaintiff to prove his case satisfactorily and convincingly illustrates his title.

In the circumstances therefore, I hold that the Plaintiffs have not satisfactorily proved their entitlement to the land in dispute, as against the Defendant."

The court below in its judgment per Uwaifo J.C.A. (as he then was) took the view that the respondents could not be bound by the judgments exhibits M and MI as they were not parties to the dispute

in which exhibits M and MI were given. At page 296 of the record of proceedings, the learned Justice of the court below (as he then was) said:

“On the other hand, if the respondent now relies on the title from Olarokun family by virtue of the judgments in favour of the said
 B Olarokun family as per exhibits N and NI. It must be realized that the appellants have argued and shown that neither the appellants nor their representatives or privies were parties to those action (sic). The respondent has in so (sic) way controverted that nor countered it
 C with a stronger argument. It is plain to me that those judgments are not at all binding on the appellants in the circumstances. Each of them is *res inter alios acta* (sic). - which means simply that events which involved those not parties to an action are generally not admissible against them because they are immaterial and strictly not
 D relevant. Hence *re inter alios acta altarinocare non debet*, (sic) meaning, things done between strangers ought not to injure those who are not parties to them. The family of Iyanru were (sic) not a party to those suits, nor were the Somefun nor Macaulay families. The judgments in those suits cannot therefore injure their interests.”

E And still further on the said point the learned Justice observed at pages 298 - 299

“I have no hesitation in holding that the learned trial judge wrongly relied on the judgments as per exhibit M and MI in the circumstances to decide the relative strengths of the title of Iyanru family and Olarokun family. As I said earlier those judgments do not bind the Iyanru family as they were not a party to the proceedings in which they were given. Before such judgments can bind them, they must qualify as *estoppel per rem judicatum*. (sic). In order for a judgment
 F to so qualify, (1) the judgment must be valid and subsisting; (2) the parties in that judgment must be the same as the parties (by themselves or their privies) in the subsequent proceeding (3) the subject-matter must be the same; and (4) and the cause (in a cause of action
 G *estoppel*) decided in the earlier proceeding must have arisen again in the (later proceeding: see *Yeye v. Olabode* (1974) 10 S.C. 209 at 231; *Shola Coker v Sanyaolu* (1976) 9 & 10 S.C. 203; *Fadiore v Gbadebo* (1978) 3 S.C. 219; *Adesina Oke V. Adeloye* (1986) 1 S.C. 422; *Odievwedjie v. Echanokee* (1978) 1 NWLR (pt.52) 633.”

It seems to me that the court below was right in its views

and the trial court clearly wrong. In Nwaneri v. Oruwa [1959] 4 F.S.C. 132, Abbot A. C.J.F. observed:

“It is well known that before this doctrine can operate, it must be shown that the parties, issues and subject matter were the same in the previous case as those in the action in which the plea of res judicata is raised.”

See also Nkanu v. Onun [1977] 5 S.C. 13 and Ekpoke v. Usilo [1978] 6-7 S.C. 187.

It is apparent that the parties in the suits in which the judgments exhibits M and MI were given were not the same as in the current proceedings. However, the appellant is contending that the respondents were the privies of the parties in exhibits M and MI. The appellant’s counsel in his brief at pages 2-3 argued thus:

“4.02. It is submitted that the lower court, with due respect, was wrong in holding that Exhibits M & MI were not binding on the respondents to constitute estoppel *per rem judicata*. My Lords, the requirements for a previous judgment to operate as estoppel *per rem judicata* are well settled in law, viz:

- (a) The judgment must be valid and subsisting;
- (b) The parties in the previous judgment must be the same in the subsequent proceedings;
- (c) The subject matter must be the same;
- (d) The cause or issue decided in the previous proceedings must have arisen in the later proceedings.

See *Odejemvedge v. Echanokpe* [1987] 1 NWLR (Pt.52) 633.

4.03. My Lords, the relevant question here is, did Exhibits M & MI satisfy the above requirements to make them operate as estoppel against the respondents in this suit? It is humbly submitted that the clear answer to the above query is YES as hereunder adumbrated. First, it is not in dispute between the parties herein that Exhibits M & MI (the previous judgment) (sic) are valid and subsisting. No where in the record was it shown that the judgments were upturned by a higher court. Secondly, it is contended that the parties in the previous judgment (sic) and the instant suit are the same. In the previous judgments, the plaintiffs traced their root of title to the Oniyanru Family. Both plaintiffs lost as against the title of the Olarokun family as represented by the defendants in the previous judgments.

4.04 Submits that for the parties in the two proceedings to be the same, they must not necessarily be named in the writ or pleadings, it suffices if they are privies to such parties. In law, privies are of three categories of: (1) privies in blood, such as ancestors and heirs; (2) privies in law, such as testator and executor; and (3) privies in state, such as vendor and purchaser, lessor and lessee. See the cases of *Coker v. Sanyaolu* (1976) 9-10 S. C. 203; *Akpan v. Utin* (1996) 7 NWLR (Pt.108) 164; *Adeleke v. Akanji* (1994) 4 NWLR (Pt.341) 715. Thus, a privy is a person whose title is derived from and who claim through a party See: *Coker v. Sanyaolu* (supra) at 221.

4.05 In this suit, the plaintiffs (respondents) claim title through the Oniyanni family as per Exhibits C, C1 & C2. On the other hand, the Defendant (Appellant) first claimed title through the Oniyanru family and later through the Olarokun family. This fact is reflected both in the pleadings of the parties, the evidence adduced at the trial and as found by the learned trial judge. See page 239 of the record. Based on the above therefore, one is at loss as to the basis upon which with due respect, the lower court held that Exhibits M & M1 were not binding on the respondents since they were not parties as to constitute estoppel per rem judicatam against them. It is submitted based on the foregoing decisions and with due respect to the lower court that this is a misconception of law.”

It is worth stating here that the respondents did not acquire title from the plaintiffs in exhibits M and M1. The Iyanru family was not a party to the two cases. The respondents could not therefore be privies to the plaintiffs in exhibits M and M1.

In any case the title of the respondents was hinged on the sale of the land in dispute by Iyanru family to O. Somefun vide a conveyance dated 10-3-1911 and registered as No. 13 at page 45 in volume 77 of the Register of Deeds, Lagos. In other words, the Iyanru family had divested itself of title in the land in dispute since 1911 in favour of the respondents’ predecessors in title. The judgments relied upon by the appellant to raise a plea of *res judicata* were given 6/6/86 and 1/10/83. **It is settled law that a plea of estoppel per rem judicatam must be mutually enforceable.** In *Mercantile Investment and General Trust Company V. River State Trust, Loan and Agency Co. [1894] Chancery Division 578 at 591*, Romner J. stated this principle thus:

“Estoppel is only admitted as part of our law to secure finality in litigation. One principle inseparable from the doctrine is that it must be mutual: Spency v. Williams Law Report 2.PM.230, 237.”

The principle was applied by this court in *Talabi V Adeseye (1972) 8-7 S.C. 20* where this Court per Coker JSC said:

“Prima Facie, a prior purchaser of land cannot be estopped as being privy in estate by a judgment obtained in an action against the vendor commenced after the purchase. (See per Romer J. in *Mercantile Investment and General Trust Company v River Plate Trust Loan and Agency Company (1894) 1 ch, D.578* at p. 595. In *Spencer-Bower on Res Judicata (Second Edition)* at p.210, the following statement of law appears:-

***‘where privity of estate is set up as the foundation of estoppel per rem Judicata, the title relied on to establish such privity must have arisen after the judgment on which res judicata is based, or at least after the commencement of the proceedings in the course of which judgment was given’.*”**

Clearly therefore, as the title of the respondents had not arisen after exhibits M and MI, a plea of estoppel per rem judicatam could not be successfully raised against the respondents based on exhibits M and MI. If the Olarokun family on whose title the appellant relied, has any grouse against the respondents, they would need to bring a fresh action of their own to enable the issue of the titles of Iyanru and Olarokun to be ventilated. The plea of *estoppel per rem judicatam* raised by the appellant was rightly overruled by the court below.

I stated earlier that **appellant also relied on the title of Oniyanru upon which the respondents also relied. But whereas the respondents traced the source of their title back to 1911 when the Iyanru family sold the land in dispute to Somefun, the appellant on the other hand only acquired her title from the same family vide a Deed of gift made on 16-5-80 and Registered as No.69 at page 69 in volume 1780 in the Lagos Lands Registry. The appellant also pleaded that she was put in possession of the land in dispute in 1972. The result is that the respondents acquired their title from the Iyanru family long before the appellant did. The Iyanru family by the prior sale of**

the land to the respondents' predecessor-in-title in 1911 no longer had an interest in the land in dispute which could be passed to the appellant in 1972 or 1980. In *Atanda v Ajani* (1989) 3 NWLR C Pt III) 511 at 538, this Court per Obaseki JSC restated the position of the law thus:

B “Whereas in the instant appeal, the root of title rests in a known grantor; credible evidence of the grant must be given. *Thomas v Holder* (1948) 12 W.A.C.A. 78. The parties to this appeal pleaded their root of title and from the pleadings they appeared to be different. But the evidence traced their root to the same source - Balogun Oderinlo. C Where, as in this case, the two competing titles originate from a common grantor, the first in time takes priority and the trial Judge must, in addition to finding as a fact that both parties derive title originally from a common grantor, proceed to ascertain where there is a credible evidence; the priority of the competing titles.” D

(underlining mine)

From what I have said above, it is clear that the court below was right to prefer the title of the respondents to the appellant's.

Appellant's issue 2 raises issue as to the identity of the land in dispute. It seems to me that guided by the pleadings of parties upon which the suit was tried, the identity of the land in dispute was a non-issue. In paragraph 7 of the amended statement of claim, the respondents pleaded identity of the land in dispute thus: E

F 7. *The Plaintiffs avers that the land in dispute is part of a large area of land which originally belonged to the Iyanru family under native law and Custom and was sold to one Moses O. Somefun by a conveyance dated 10th March, 1911 and registered as No. 13 at G page 45 in volume 77 of the Register of Deeds kept at Lagos.*”

In paragraphs 18 and 25(b) of her Further Amended Statement of defence, the appellant pleaded thus:

H “18. *At the trial the defendant will rely on composite plan CO 89/89 dated the 16th day of August 1989 showing the positioning of the land claimed by the defendant and that claimed by the plaintiff and showing computation of plan No. JO61A/76 made by surveyor Ogunsanya on 18.10.76, area covered by Deed of Conveyance registered as No. 13 at page 45 in Volume 77 of the Register of Deeds kept at the Lagos State Land Registry Lagos, area covered by Deeds*

of conveyance registered as No.11 at page 11 in volume 340 of the Lands Registry, Lagos and area covered by Deed of Certificate of Occupancy registered as No.97 at page 97 in Volume 1982A of the Lands Registry Lagos.”

25(b) *That the Plaintiffs are not entitled to a statutory right of Occupancy in respect of the land described on the plan drawn by O. B A. Pedro deed 1st September, 1931 attached to the Deed of conveyance dated 20th June, 1932 and registered as No.11 at page 11 in volume 340 of the Register of Deeds kept at Lagos.”*

It is apparent from the extracts of the parties pleadings reproduced above that both parties knew the land in dispute and joined issue thereupon. I decide issue 2 against the appellant. C

Under issue 3, the appellant’s counsel contends that the appellant’s evidence as to her title to the land in dispute ought to have led the court below to arrive at the conclusion that she had a better title. I think, that, to have held that the appellant had a title better than the respondents would have amounted to a travesty of justice. She did not show that the respondents were the privies of the parties in dispute in exhibits M and MI. Further, on the evidence, guided by the principle of law governing priority of interest in law, an interest the appellant acquired in 1972 or 1980 could not take priority over the interest acquired by the respondents in 1911. **Still on the issue of res judicata, it is apposite to mention that it was not appellant’s case that when the hearing in the suits which led to the judgments in exhibits M and MI were going on, the respondents knew about it and allowed their battle to be fought on their behalf. If that was the situation, the respondents might be held bound by the judgments exhibits M and MI.** In *Etiti V Ezeobiri* (1976) 12 S.C. 123, this court *per* Idigbe JSC discussed the nature of *Res Judicata* in such a situation thus: F G

“That rule of estoppel was stated thus, by the West African Court of Appeal in 1942:

‘for the purpose of estoppel per rem judicatam, ‘party’ means not only a person named as such but also one who being cognizant of the proceedings and of the fact that party thereto is professing to act in his interest allows his battle to be fought by that party intending to take the benefit of the championship in the success(see Amencio H

Santas Vlkosi Industries Ltd. & Anor (1942) 8 WACA 29).’

It therefore, follows that if an individual was content to stand by while his battle was fought and concluded by another in same interest he must be and is indeed, bound by the result and should not be allowed to re-open the case, (see also Okorie Uwalaka & Ors V. Ngwuliaku Agba & Ors (1955) 15 WACA 63 at 65; also Hoystead V. The Commissioner of Taxation (1926) A.C 155 at 165 (P.C.) “

The appellant did not fight the case at the trial court on the basis that the respondents stood by and allowed other persons to fight on their behalf the suits upon which the judgments exhibits M and M1 were given. I therefore affirm that it was the respondents and not the appellant who proved a better title.

On issue 4, **the appellant’s counsel raises issue as to whether the court below was right in pronouncing the land certificate granted to the appellant by the Lagos State Government as null and void. I think that the appellant’s counsel has not adverted his mind to the context in which the court below held that exhibit K, the certificate of occupancy, issued to the appellant by the Lagos State Government, when the interest of the respondents in the land subsisted was invalid.**

The court below referred to the observation made by Nnaemeka-Agu JSC, in *Ogunleye v. Oni* (1990) 2 NWLR (part 135) 745 at 248 where he said:

“Although a Military Governor of a State could in a proper case, revoke the respondent’s right of occupancy under section 28 of the Act, he did not do so before purporting to grant to the appellant a certificate of occupancy. Exhibit B over the same Land over which the respondent had a right of occupancy. In my opinion such a grant of a right of occupancy by the Governor or Commissioner on his behalf to a party when another person’s right of occupancy has not been revoked is invalid. The learned counsel for the appellant cannot therefore be right when he submitted that the certificate of occupancy Exhibit B, reinforces the appellant’s title.”

The court below then went on to say:

“In the present case, the appellant’s counsel in his brief discredited the value of the certificate of occupancy exhibit ‘K’ which the respondent obtained from the Lagos State Government. It was shown that it was issued while the appellant’s right of occupancy sub-

sisted and had not been revoked by the governor. The respondents counsel proffered no argument in respect thereof. . I would say that he had none to put forward in the face of the legal position. Exhibit 'K', the said certificate of occupancy, being of no value shall invariably be ignored."

The appellant had tendered exhibit 'K' as an additional proof of the title which she asserted. If, on the state of the law, the said exhibit 'K' has no evidential value, it was the duty of the court below to say so. I do not therefore see that the court below was wrong in doing what was clearly its duty. I decide issue 4 against the appellant.

The complaint of the appellant under his last issue is that the award of N10,000.00 by the court below as damages for trespass was excessive. The respondents had claimed N60,000.00 as damages for trespass. In paragraph 13 of the amended statement of claim, the respondents pleaded the nature of the damages claimed thus:

"13. The defendant has destroyed the cash crops on the land worth N50,000.00 and has dug pits thereon and appears to be erecting what looks like a petrol filling station."

In his evidence before the trial court P.W.I said:

"Defendant brought bulldozers on land which cleared our crops. We had a farm on the land we wanted to build a fence. Defendant erected a petrol station on the land. She started after I accosted her. I report at NNPC T went to National Oil Co. to report, I claim as damage N50,000.00."

The court below did not state the basis of the award of N10,000.00 as damages. In *Dumem (Nig) Ltd. V Ogbeli (1972) 1 All NLR 241 AT 252*, the Court per Lewis JSC said:

"It is axiomatic that special damages must be strictly proved G and unlike general damages where if the plaintiff establishes in principle his legal entitlement to them, a trial judge must make his own assessment of the quantum of such general damages and an appeal to this court such general damages will only be altered if they were shown to be either manifestly too high or manifestly too low or awarded H a wrong principle."

I am unable to say that the award of N10,000.00 as damages for trespass is in the circumstances of this case manifestly too high. I therefore decline the invitation to reduce it.

Finally, it is my conclusion that this appeal has no merit. I would dismiss it. I award N50,000.00 costs in favour of the respondents.

TOBI JSC

B I have read the judgment of my learned brother, Oguntade, JSC and I agree with him that the appeal has no merit and should be dismissed.

C I will only deal with Issue 1 on Exhibits M and MI as it relates to the plea of *res judicata*. On the issue, the Court of Appeal said at pages 296 and 298 of the Record:

D “It is plain to me that those judgments are not at all binding on the appellants in the circumstances. Each of them is *res inter alios acta*, which means simply that events which involve those not parties to an action are generally not admissible against them because they are immaterial and strictly not relevant. Hence *res inter alios acta altarnocare non debet*, meaning things done between strangers ought not to injure those who are not parties to them. The family of Iyanru were not a party to those suits, nor were the Somefun and Macaulay families. The judgments in those suits cannot therefore injure their interests... I have no hesitation in holding that the learned trial judge wrongly relied on the judgments as per exhibits M and MI in the circumstances to decide the relative strengths of the title of Iyanru family and Olarokun family. As I said earlier those judgments do not bind the Iyanru family as they were not a party to the proceedings in which they were given. Before such judgments can bind them, they must qualify as *estoppel per rem judicatum*. In order for a judgment to so qualify, (1) the judgment must be valid and subsisting; (2) the parties in that judgment must be the same as the parties (by themselves or their privies) in the subsequent proceeding (3) the subject matter must be the same; and (4) the cause (in a cause of action *estoppel*) decided in the earlier proceeding must have arisen again in the (later proceeding; see *Yeye v Olabode* (1974) 10 S.C. 209 at 231; *Shola Coker v Sanyaolu* (1976) 9 & 10 S.C. 203; *Fadiore v. Gbadebo* (1978) 3 S.C. 219; *Adesina ok v. Adeloye* (1986) 1 S.C. 422; *Odievwedjie v Echanokee* (1987) 1 NWLR (pt.52) 633.”

H The Court of Appeal is correct. Counsel for the appellant is wrong in his submission that Exhibits M and MI operate as *estoppel*

against the respondents. While I agree with learned counsel for the appellant that estoppel can apply in respect of privies, the appellant did not show that the respondents were privies in respect of the dispute involving Exhibits M and MI. It is for the above reasons and the fuller reasons given by my learned brother Oguntade, JSC in his judgment that I too dismiss the appeal. I also award N50,000 costs in favour of the respondent.

OGBUAGU JSC

This is an appeal against the Judgment of the Court of Appeal, Lagos Division (hereinafter called “the court below”) delivered on the 23rd January, 1997, reversing the decision of the trial court - per Desalu, J. sitting at the High Court of Lagos State, Ikeja Division, dismissing the Plaintiffs’/Respondents’ claims on the ground that they failed to prove that they had/have a better title to the land in dispute than the Defendants.

Dissatisfied with the said Judgment, the Appellants who were the Defendants at the trial court, have now appealed to this Court on eight (8) Grounds of Appeal.

The Plaintiffs/Respondents claimed against the Defendants/Appellants for the following reliefs:

“(a) *A declaration that the Plaintiffs are entitled to a statutory right of occupancy in respect of the land described in a Conveyance dated 20th June, 1932 and registered as No. 11 at page 11 in volume 340 of the Register of Deeds kept at the Lands Registry, Lagos.*

(b) An injunction restraining the Defendant by herself, her privies, agents, servants or otherwise howsoever, from continued trespass upon the said land in dispute.

(c) Sixty thousand Naira (=N=60,000.00) damages for continued trespass”.

The Appellants formulated five (5) issues for determination, namely,

“1. *Whether the Lower Court was right in holding that Exhibits M & MI were not binding on the respondents to constitute estoppel per rem judicata? Ground 3,*

2. *Whether the Lower Court did not misdirect itself on the facts that the location and identity of the land in dispute were not in*

doubt to justify its holding that the land purchased by Somefun in Exhibit C falls within the land in Exhibit C2? - Grounds 1 & 4.

3. *Whether from the facts of this case as contained in the printed record, it can be said that the Appellant's evidence as to who title to the land in dispute lay is contradictory, as against that of the Respondents, to justify the holding of the Lower court that the Appellant has not proved a better title to the land in dispute — Grounds 2 & 5.*

4. *Whether the Lower Court was right in raising and resolving suo motu, the issue of the validity of the Certificate of Occupancy held by the Appellant in respect of the land in dispute and holding that the said Certificate of occupancy is null and void? - Ground 7..*

5. *Whether given the totality of the evidence adduced at the trial court, the award of N10,000.00 against the Appellant as damages for trespass can be justified in law? - Grounds 6 & 8"..*

On their part, the Respondents, have formulated two (2) issues for determination, namely,

“ 1. *Whether the land covered by Exhibit C2 is within the land purchased by Moses Odeyinka Somefun as per Exhibit C.*

2. *Whether the land in dispute, is wholly or partially within the land sold by auction, to Samuel Rowland Latunji Macaulay as in Exhibit C2 “.*

When this appeal came up for hearing on 6th January, 2009, both learned counsel for the parties, adopted their respective Brief. While Adegboruwa, Esqr., - learned counsel for the Appellant, urged the Court to allow the appeal, Anishere (Mrs.) -learned counsel for the Respondents, urged the Court to dismiss the appeal. He/she submitted that the Appellant, was “shopping” issues of res judicata which he/she further submitted, cannot apply and that it goes to no basis. He/she stated that the parties are not the same and relied firmly, on root of title through Iyanru's family.

In his reply, Mr. Adegboruwa, referred to the pleadings and told the Court that they are not “shopping”. That they want Iyanru's family, to ratify their own grant. Thereafter, Judgment was reserved till to-day.

In my respectful view, this appeal, will be decided also by documentary evidence - i.e. some of the exhibits - particularly - C, C1, C2, K. L. M and M1. Now, the Respondents both in the claim and in their evidence, traced their root of title through Iyanru's or Oniyanru's

family. This said family, sold and conveyed this land in dispute which is a part of their larger land, to one Moses Odeyinka Somefun on 10th March, 1911. The Conveyance, was registered as No. 13 at page 15 in volume 77 of the Register of Deeds in the Lands Registry, Lagos. It is Exhibit "C". The extent or description of the land so sold on the Survey Plan attached to the said Deed of Conveyance, corresponds with the description of the land contained in the said exhibit. B

It is the evidence of the Respondents, that Moses Odeyinka Somefun, later mortgaged the said portion of land, to the Scottish Nigerian Mortgage and Trust Co. Ltd. by a Deed of Mortgage dated 6th July, 1920 and also registered in the same Lands Registry as No. 17 at page 53 in Volume 14. It is Exhibit C1. The Mortgagor, defaulted and the Mortgagee, sold a portion of the land by auction, to one Samuel Rowland Latunji, Macaulay. The Deed of Conveyance dated 20th June, 1932, was registered in the same Land Register of Deeds in the same Land Registry, as No. 11 at page 11 in Volume 340. It is Exhibit C2. I note that Samuel Rowland Latunji, was the grandfather of the Respondents. C D

I note from the pleadings of the Appellant in her Further Amended Statement of Defence, she gave two conflicting or contradictory roots of title. She first claimed her root of title, from the Respondents' family - see paragraphs 3, 4, 5, 8 and 10 thereof. She later pleaded that she paid N15,000.00 (fifteen thousand naira) in order to perfect her title or confirm and ratify the sale to her, to the Olarokun family following two suits in which one Gilbert Oyenola Ogunro and one Lydia Thomson were the Plaintiffs respectively, as a ground for relying on the plea of per res judicata. See paragraphs 12, 13, 14 and 15 thereof. See also Exhibit "L". I note also, that she did not plead, how and when, the Olarokun family, derived their root of title i.e. as to how and when the family came to own the said land. E F G

I note that in paragraph 4.05 of the Appellant's Brief, the following appear, inter alia;

"In this suit, the plaintiffs (respondents) claim title through the Oniyanru family as per Exhibits C, C1 & C2. On the other hand, the Defendant (Appellant) first claimed title through the Oniyanru family and later through the Olarokun family. This fact is reflected both in the pleadings of the parties, the evidence adduced at the trial and as H

found by the learned trial Judge. See page 239 of the record.....”.
[the underlining mine]

I note that ironically, the learned trial Judge at page 239 lines 25 to 26 of the Records, described it as “double pronged defence of the Defendant”.

B On the above admission, in the Appellant’s Brief, this should have been the end of this appeal in favour of the Respondents. I note that the Appellant claimed that the grant to her of the land in dispute, was a Gift and that the Respondents’ family in 1972, put her in possession of the land in dispute. She relied on Exhibit “L”. Assuming that this is correct, of course, in law and in fact, that family, could not give to her, what they/it did not have. The said grant, would and was or still, *void ab initio*. I say so, because, from the evidence and Records demonstrated by me above, the Respondents’ family, had D long since 1911, divested their interest or ownership of the said land vide Exhibit “C”. See the case of *Famuroti v. Agbeke* (1991) 5 NWLR (Pt.189) 1 @ 15 S.C. - cited and relied on in the Respondents’ Brief; and also referred to, by the court below at page 296 of the Records. See also the cases of *Egbuche v. Idigo* (1934) NLR 140; *Sanyaolu v. E Coker* (1983) 3 S.C. 124 @ 163-164; (1983) 1 SCNLR. 168 and Ugo v. *Obiekwe & anor.* (1989) 1 NWLR (Pt.99) 566; (1989) 2 SCNJ. 95 just to mention but a few. The latin maxim, is *Nemo dat quad non habet*.

F Where two persons claim or claimed to be in possession of the same portion of land, it is now firmly settled that the law, ascribes possession to one with a better title. See the cases of Amakor v. Obiefuna (1974) 3 S.C. 67; Omoni v. Siriya (1976) 6 S.C. 49 & 54; Aromire v. Awoyemi (1972) 1 All NLR 101 @ 112 ; Lion Building G Ltd. v. Shodipo (1976) 12 S.C. 13; Mogaji v. Cadbury (Nig.) Ltd. (1985) NWLR (Pt. 7) 393 and Fasoro & anor. v. Beyioku & ors. (1988) 2 NWLR (Pt. 76) 267 @ 270 - 271; (1988) 4 SCNJ. 23 just to mention but a few. So also held the court below, at page 298 of the Records.

H In respect of Exhibit “K” of the Appellant, it is clear to me that from the facts I have stated above, at best, it was/is a competing document of title to Exhibit “C”, C1 and C2. It is now firmly settled that he who is first in time, takes priority. In other words, where two or more competing documents of title upon which parties to a land

dispute, rely for their claim of title to such land which originated from a common grantor, the doctrine of priorities applies. See the cases of *Atanda & ors. v. Ajani & ors.* (1989) 3 NWLR (Pt.III) 511; (1989) 6 SCNJ. 193 and *Autav. Ibe* (2003) 1 NWLR (Pt.837) 247; (2003) 14 SCM. 39 -per Iguh. JSC.

At page 299, the court below, stated inter alia, as follows: B

"The evidence led by the Respondent (now Appellant) is contradictory as to whom (sic) title to the land in dispute lay".

I agree. I have in this Judgment, found the above as a fact. Earlier from pages 295- 296, the court below - per Uwaifo, JCA (as C he then was) stated inter alia, as follows:

"The first focus is to determine whether the land inherited by the Appellants (now the Respondents) as per exhibit C2 can be ascertained as being within the land purchased by Somefun as per exhibit C. Once that is established, the second focus is to see whether D the land to which the respondent (now Appellant) lays claim is wholly or partially within the sold land in exhibit C2. If it is, then it would mean the respondent who got the land at best in 1972 (but more accurately on 16th May, 1980 as per conveyance surprisingly registered in violation of the Land Use Act, as a deed of gift as No. 69 at E page 69 in volume 178 at Lagos) allegedly from the same Iyanru family, would be trespasser as Iyanru family could not as at that time grant her that land because they no longer had it Nemo dat quad nom (sic) habet. This is a well-known principle applicable to a situa F tion where land already sold to a party by the owner as vendor subsequently be sold by that owner to another party in conflict with the earlier title created because the vendor had nothing in law left to sell: See Famuroti v. Agbeke (1991) 5 NWLR (Pt.189) 1 @, 15".

I have already stated so above in this Judgment. In paragraph G 18 of the Further Amended Statement of Defence, the Appellant, pleaded that she has a Certificate of Occupancy registered as No. 97 at page 97 in Volume 1982 A of the Lands Registry. This grant of course, on the decided authorities of the two Appellate Courts, was very much in error. This is because, the effect of Section 34 of the H Land Use Act on or in respect of the title of a person with title to land before the coming into force of the Act, is that vested rights (such as is in the instant case leading to this appeal), CANNOT be defeated by the application of say Sections 1 and 5 of the Act. The prerequisite

for a valid grant of a Certificate of Occupancy, is that there must not be in existence, the valid title of another person with legal interest in the same said land at the time the certificate was issued. See the case of *Ogunleye v. Oni (1990) 2 NWLR (Pt. 135) 745 @ 752, 774 - 785; (1990) 4 SCNJ. 65* (also referred to by the court below at page 302) where it was held inter alia, that where (as in this case) a Certificate of Occupancy, has been granted to one of the claimants who has not proved a better title, it has been granted against the letters and spirit of the Land Use Act. See also the case of *Olohunde & anor. v. Prof. Adeyoju (2000) 6 SCNJ. 470 @ 493-494* - per Iguh, JSC.

For a Certificate of Occupancy under the Act to be therefore, valid, there must not be in existence at the time the certificate was issued, a Statutory or Customary owner of the land in issue or dispute who was not divested of his legal interest to the land prior to the grant. In other words, where a Certificate of Occupancy has been granted to one of two claimants who has not proved a better title (as the Appellant), it must be deemed to be defective, to have been granted or issued erroneously and against the spirit of the Act and the holder (such as the Appellant), would have no legal basis for a valid claim over the land in dispute.

It must be stressed and this is also settled that a Certificate of Occupancy, does not confer legal right to possession where the or such possession, was procured following acts of trespass such as in this case leading to this appeal. In other words, possession cannot be properly and validly secured by an act of trespass or acquisition of a Certificate of Occupancy procured after this trespass. So held this Court in the case of *Datogoem Dakat v. Musa Dashe (1997) 12 SCNJ. 90* - per Ogwuegbu, JSC.

The holding a Certificate of Occupancy whether Statutory or Customary, is at best a *prima facie* evidence of title of the land covered by it. But its exclusive possession, is rebuttable. See the case of *Dapub v. Kolo (1993) 12 SCNJ. 1* citing the case of *Chief Titiloye & 4 ors. v. Chief Olupo & 4 ors. (1991) 7 NWLR (Pt.205) 519 @ 530; (1991) 9-10 SCNJ. 122*. See also the cases of *Olahimide & anor. v. Prof. Adeyoju (supra)* and *Alhaji Kyari v Alhaji Alkali & 2 ors. (2001) 5 SCNJ 421 @ 447, 448*.

I can go on and on in respect of this issue of the Appellant relying heavily on a purported but invalid Certificate of Occupancy.

It need be stressed or always borne in mind as this is also settled, that the registration of a Certificate of Occupancy (as was done by the Appellant), does not and cannot, cure or validate any irregularities in its procurement. This is why there is the need for a person seeking such registration, to make prior enquiries and search. But invariably, regrettably and unfortunately, this will not be done by a desperate party who wants registration of his/her “title” Deed and grant of a Certificate of Occupancy, by all means. I sound this note of warning or can I say, free advise because, the mere registration, does not and will not, validate spurious or fraudulent instrument of title or a transfer or grant which in law, patently remains, invalid or ineffective. See the cases of *Lababedi anor. v. Lagos Metal Industries (Nig.) Ltd. & anor. (1973) 8 NSCC 1* and *Romaine v. Romaine (1992) 4 NWLR (Pt.238) 650; (1992) 5 SCNJ. 25* - per Nnaemeka-Agu, JSC.

From the foregoing, since it is also firmly settled that where it is shown by evidence, that another person other than the grantee of a Certificate of Occupancy, had a better right to the grant, a court such as this Court, may have no option, but to set aside the said grant or otherwise, discountenance it as invalid, defective and/or spurious as the case may be. See the cases of *Ogunleye v. Oni (supra)* and *Dzungwe v Gbishe & anor. (1985) 2 NWLR (Pt.8) 528 @ 540*. S.C.

As also found as a fact by the court below at page 303 of the Records, Exhibit K, was issued to the Appellant, while the Respondents’ right of Occupancy, subsisted and had not been revoked by the Governor. It however, ignored the said Exhibit K as it held that it was of no value. But since this Court, has also an option in such a situation or matter, having regard to the conduct of the Appellant or circumstances that is borne out from the Records before this Court, I hereby and accordingly, set aside the grant and registration of the Appellant’s said Deed of Conveyance and the said Deed of Certificate of Occupancy registered as 97/97/1982A of the Lands Registry, Lagos. I hereby and accordingly, affirm and endorse, the Orders of the court below at page 304 of the Records.

My reading of the Records, puts me in no doubt that the trial court, with respect, was in grave error. I say so because, in spite of the overwhelming evidence by documentary evidence which has been held to be the best evidence, the learned trial Judge at pages 239 - 240, stated as follows:

"In both EXHIBITS "M" and "M1" the OLAROKUN family was sued as Defendants in respect of their family land both cases, judgment went in favour of the Defendants, Olarokun family. It should be observed too, that in both EXHIBITS "M" and "M1" the root of title of the Plaintiffs (i.e. the Respondents) was ONIYANRU FAMILY.

B Both plaintiffs lost as against the title of the OLAROKUN.....".

This holding, was in spite of the fact that in both proceedings or suits and Judgments in Exhibits "M" and "M1", respectively, the Respondents or their privies or their representatives, were not parties therein as rightly in my view, found as a fact, by the court below. At
C page 296-297 of the Records, it stated inter alia, as follows:

"On the other hand, if the respondent (now the Appellant) now relied on the tide from Olarokun family by virtue of the judgments in favour of the said Olarokun family as per Exhibits N and NI, D (sic) it must be realised that the Appellants (now the Respondents) have argued and shown that neither the appellants nor their representatives or privies were parties to those action, (sic) The respondent has in so (sic) (meaning no) way controverted that nor countered it with a stronger argument. It is plain to me that these judgments E are not at all binding on the appellants in the circumstances. Each of them is res inter alios acts (sic) which means simply that events which involve those not parties to an action are generally not admissible against them because they are material and strictly not relevant. Hence re inter alion acta altar/nocara nan debit, meaning, F things done between strangers ought not to injure those who are not parties to them. The family of Iyanru were not a party to those suits, nor were the Somefun nor Macaulay families. The judgments in those suits cannot therefore injure their interests. The learned trial Judge G had before him the relevant evidence and exhibits..."

[the underlining mine]

Comment: The latin maxim is *Res inter alios acta alteri nocere non debet* - meaning, things done between others ought not to injure an outsider (not party to them).

H I note that in paragraphs 21 and 22 of the Further Amended Statement of Defence, of the Appellant, she averred or boasted that when she applied for Certificate of Occupancy in respect of the land in dispute, that the 1st Appellant, registered an objection when same was advertised in the Nigerian Tribune of 31st March, 1981 and the

Punch of 8th April, 1991. That the objection was “*later thrown out for lack of substance*” and that the Civilian Governor, issued her with the said Certificate. But she can now see that the law, is no respecter of persons and that the Rule of Law, is supreme and must be upheld.

It is from the foregoing and the more detailed Lead Judgment of my learned brother, Oguntade, JSC just delivered, and which reasoning and conclusion, I agree with, that I too hold that this appeal, is unmeritorious. I too dismiss it in addition to my said order, setting aside the said Exhibit K . I abide by the consequential order in respect of costs.

MUHAMMAD JSC

I have read the judgment of my learned brother, Oguntade, JSC”, just delivered. I am in agreement with his reasoning and conclusions that the appeal lacks merit. I, too dismiss the appeal. I abide by all the consequential orders made in the lead judgment including order as to costs.

OGEBE JSC

I had a preview of the lead judgment of my learned brother Oguntade, JSC just delivered and agree entirely with his reasoning and conclusion. I too see no merit in the appeal and hereby dismiss it and affirm the judgment of the lower court. I award costs of N50,000.00 against the appellant in favour of the respondents.