

**SUPREME COURT OF NIGERIA**  
11TH DECEMBER, 2009 SC. 54/2002  
**CORAM:- D. MUSDAPHER, A. M. MUKHTAR,**  
**I. F. OGBUAGU, M. S. MUNTAKA-COOMASSIE,**  
**J. A. FABIYI, JJSC**

TAIYE OSHOBOJA

(For himself and as representative of ..... DEFENDANT/  
Oshoboja Family of Ijegun) APPELLANTS

AND

1. ALHAJI SURAKATU AMIDA ..... PLAINTIFFS/  
2. JIMOH OPEBIYI RESPONDENTS  
3. MUFUTAU OPEBIYI

(For themselves and as representatives  
of Fagbile family of Ijegun)

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APPEALS - Concurrent findings - Disturbance - Basis - They may only be disturbed where not supported by evidence - Or they were reached on application of wrong principles of law - Neither is the case herein (H1)

LAND LAW - Customary tenancy - Admission of existence - Issue of - The issue cannot now be raised by appellants - As it was neither raised nor canvassed - Before the lower courts (H2)

**FACTS**

Before the Lagos high court, plaintiffs/respondents sued defendants/appellants claiming *inter alia*, an order setting aside the judgment dated 2nd June 1958 in Suit No. AB/29/55 in that the basis for its grant was found by the Supreme Court never to have existed when it set aside the judgment in Suit No. AB/24/55 between the same parties in respect of the same piece of land. Respondents' case was that appellants had sued them in Suit No. AB/24/55 for ownership of the land in dispute and they had also sued appellants for ownership of the same land in Suit No. AB/29/55. Both suits came before the same court and it was agreed on record that the earlier suit be tried first while the latter suit should abide the result of the earlier suit which result shall be binding on the parties in respect of

that latter suit.

Eventually judgment was given to appellants in the earlier suit and the latter suit was consequently dismissed. Respondents appealed the judgment in the earlier suit without appealing the dismissal of the earlier suit. Ultimately the Supreme Court allowed respondents' appeal in respect of the earlier suit. In the course of its judgment, Supreme Court pointed out that the judgment in the latter suit was nevertheless still subsisting as it had not been appealed against. Hence respondents brought the instant action to set aside the said judgment. After hearing, the learned trial judge granted the reliefs claimed by respondents. Aggrieved, appellants appealed to Court of Appeal which dismissed the appeal. Still dissatisfied, appellants have come on a further appeal to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“(1) whether the lower courts (sic) were right in law in granting absolute title to the respondents who had admitted that their title is burdened by the alleged customary tenancy of the appellants.*

*(2) whether the respondents were entitled to a writ of possession when no title was given to them in 1984, and when they did not also claim possession and when the reliefs claimed by them were merely declaratory.*

*(3) whether the principles of res judicata or issue estoppel were fulfilled in this case. (Etc. see p. 2278)*

### **HELD (Unanimously dismissing the appeal per **OGBUAGU JSC**) **APPEALS - Concurrent findings - Disturbance - Basis****

1. As a matter of policy which is now firmly established, this Court will not disturb or interfere with the concurrent findings of two lower courts unless, in exceptional and very clear circumstances. These include inter alia substantial error on the face of the Records, or the decision is not supported by evidence or the decision is reached on the application of wrong principles of law or procedure which had been violated or inadmissible evidence or no evidence at all, or in respect of findings which are perverse, unreasonable or, unsound.

I note that the Appellants, have not shown any of these reasons or circumstances in the instant appeal and I have not seen any except that the Appellants, are hell bent on a repetition and canvassing of the very issues which had been unequivocally and sufficiently,

dealt with by the two lower courts. This Court will not indulge them.  
(p. 2282 B/G)

***Customary tenancy - Admission of existence - Issue of***

2. I note that and as rightly stated in the Respondents' Brief, there is no where either in the claim of the Respondents and I add or in the Records, where it was alleged or pleaded or admitted that the Respondent's title;

*"is burdened by the alleged customary tenancy of the Appellants."*

More importantly, this issue was not raised or canvassed by the Appellants in any of their issues for determination in the two lower courts. I hold that they cannot now raise it. They CANNOT now, regard or parade themselves, as "customary tenants" of the Respondents. (p. 2285 H)

***NOTABLE POINT OF INTEREST***  
***OGBUAGU JSC***

***1. Issues 6 and 10 are non-issues***

In respect of Issues 6 and 10 of the Appellants, in my respectful view, I hold that they are, non-issues having regard to all the circumstances of this case above discussed. This includes as I noted in this Judgment, that the land in dispute is one and the same - i.e. the identity is/was not in dispute. What is more, as noted by me earlier in this Judgment, the court below affirmed the said Judgment of the trial court.  
(p. 2285 F)

***REPRESENTATION***

Alhaja (Mrs.) R. O. Ayoola, for the Appellants, with S. Abimbola, Esq. Folami Fasino, Esq., for the Respondent, with Segun Akintan, Esq.

***CASES REFERRED TO***

Ogbu v. Wokoma (2005) 14 NWLR (Pt. 944) 118

Bakare v. L.S.C.S.C. (1992) 8 NWLR (Pt.262) 641

Ogun v. Akinyelu & ors 2004 18 NWLR part 905 page 362

Chief Omokhafa v. Chief Esekhomo (1993) 8 NWLR (Pt.309) 58

Adomba & 3 ors. v. Odiese & 3 ors. (1990) 1 NWLR (Pt.125) 165

Nwadike & 2 ors. v. Ibekwe & 2 ors. (1987) 4 NWLR (Pt. 67) 718

Layinka & anor. V. Makinde & 5 ors. (2002) 5 S.C. (Pt.1) 109 @ 109 @ 113

Taiye Oshoboja v. Alhaji Surakatu I. Amuda & 2 ors. (1992) 6 NWLR (Pt.250) 690

Prince Yaya Adigun & ors. v. Secretary, Iwo Local Government (1999) 5 S.C. (Pt.III) 1 @ 8

Prince Adigun & ors. v. Attorney of Oyo State & 18 ors. (No.2) NWLR (Pt.55) 197 @ 231

**STATUTE REFERRED TO**

C Court of Appeal Act, 1979, s. 16

**LEAD JUDGMENT BY OGBUAGU JSC**

This is an appeal against the decision of the Court of Appeal, D Lagos Division (hereinafter called “the court below”) delivered on 20<sup>th</sup> June, 2000 affirming the Judgment of the High Court of Lagos State Judicial Division presided over by Obadina, J. (as he then was) delivered on the 19<sup>th</sup> of December, 1996 which found in favour of the Respondents.

E Dissatisfied with the said decision, the Appellants have further appealed to this Court initially on six (6) Grounds of Appeal but they later filed an Amended Notice of Appeal with fourteen (14) Grounds of Appeal. They have formulated ten issues for determination. They read as follows:

F “(1) *whether the lower courts (sic) were right in law in granting absolute title to the respondents who had admitted that their title is burdened by the alleged customary tenancy of the appellants. Grounds 7.*

G (2) *whether the respondents were entitled to a writ of possession when no title was given to them in 1984, and when they did not also claim possession and when the reliefs claimed by them were merely declaratory. Ground 8.*

H (3) *whether the principles of res judicata or issue estoppel were fulfilled in this case. Ground 1, 2, 10, 11 and 12.*

(4) *whether the judgment of the lower courts were not wholly against the weight of admissible evidence. Ground 3.*

(5) *whether miscarriage of justice has not been occasioned in this case. Ground 13*

(6) *whether the acceptance of the evidence of witnesses in a previous proceeding that had been set aside by the Supreme Court was not contrary to the principles enunciated in Alade v. Aborisade (1960) 1 NSCC page 111. Ground 9.*

(7) *whether the respondents action was not statute barred by virtue of section 12, of the Limitation Law of Lagos State. Ground 5.* B

(8) *was the tenancy agreement between Oshoboja family and Amida Opebiyi of Fabile family not binding on Fagbile family when it was in respect of the same land. Ground 14.*

(9) *whether or not Order 4 Rule 8 of the Judgment enforcement Rules Lagos State, was/is not applicable to the Plaintiff/respondents' action. Ground 6.* C

(10) *whether or not the Oshoboja family could have appealed against the dismissal, of AB/29/55 or could have brought a cross action against the said Suit. Ground 4".* D

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

"1. *Whether from the totality of the findings in this suit, and the Genesis of this case, its revealed in Exhibits A, B, C, C', D, E, F, G, H and H' which are all certified true copies and orders of various court (sic) more particularly the Supreme Court decisions in 1966, 1989 and 1992 in Suit Nos. AB/24/55 and AB/29/75, was and the High Court and the Court of Appeal right in setting aside the decision in Suit No. AB/29/55* E

2. *Whether the Respondent (sic) herein are entitled to declaration of title to the piece and parcel of land, the subject of this Appeal?"* F

When this Appeal came up for hearing on the 29th September, 2009, Alhaja (Mrs.) Ayoola the leading learned counsel for the Appellants, adopted their main and Reply Briefs. He/she urged the Court to allow the appeal. Fasino, Esq. - leading counsel for the Respondents, also adopted their Brief and he urged the Court to dismiss the appeal. Thereafter, Judgment, was reserved till to-day. G

The facts of the case leading to this appeal as appear in the Records and in fact, as substantially stated in both Briefs of the parties, are not in dispute. I note that the two lower courts, also found as a fact, these fact; in their respective well considered Judgment. They are as follows: H

In the Suit in the trial High Court of Lagos State Suit No. ID/473/81 which was remitted back for re-trial in that court by this Court in its Judgment of 17<sup>th</sup> July, 1992, the Plaintiffs/Respondents in their 4th Amended Statement of Claim, claimed as follows:

B “1. *An order setting aside the Judgment of the Honourable Justice John Taylor dated the 2<sup>nd</sup> of June, 1958 in Suit No. AB/29/55, Tesi Opebiyi, for himself and representative of the other members of the Fagbile family kind Ijegun as Plaintiffs and Kelani Ogunleru and Shittu Oshoboja for themselves and representatives of Koaki family of Ijegun as Defendants, as It will amount to a fraud on the Plaintiffs and result in a denial of Justice to allow the said judgment to remain subsisting, when the basis or consideration for its grant no longer exists and found by the Supreme Court of Nigeria never to have existed by setting aside the judgment in Suit. No AB/24/55 the same parties.*

E 2. *A declaration that the Plaintiff are the owners in law and equity of the piece or parcel of land lying, situated and being at Ijegun, Isheri-Oshun in Alimosho Local Government of Lagos State, Particularly described as the area verged green in the composite plan No. JO25/93 dated 05 October, 1993 prepared by Olusola Ogunsanya registered surveyor, the subject-matter of this case by virtue of customary ownership and traditional history.*

F 3. *A declaration that the Plaintiff are the persons entitled to a statutory right of occupancy deemed to be granted by the Military Governor of Lagos State by virtue of the Land Use Act, 1978”.*

G After hearing evidence, in his said Judgment, the learned trial Judge, granted all he reliefs/claims of the Plaintiffs/Respondents. Aggrieved by the said Judgment, the Defendants/Respondents, appealed to the court below. In that court, each party, formulated five (5) issues for determination In a unanimous decision, the court below as earlier stated in this Judgment, dismissed the appeal and affirmed the said Judgment of the trial court, hence this further or instant appeal.

H I note that the two lower courts stated in their respective Judgment, the genesis of the dispute between the parties. For purposes of emphasis and for the avoidance of doubt, I will state or repeat them in this Judgment as has been done by the parties in their respective Brief of Argument.

In 1955, the Defendants/Appellants in Suit No. AB/24/55 sued the Plaintiffs/Respondents over the ownership and possession of the land in dispute. In Suit No. AB/29/55, the Plaintiffs/Respondents, sued the Defendants/Appellants for declaration of title over the same piece or parcel of land. Both suits came up for hearing before the same Judge. Counsel for the parties agreed with the approval of the trial Judge -Taylor, J. (as he then was), that Suit No, AB/24/55 should be heard first being the first in time as a test case and that Suit No. AB/29/55 shall abide the result in AB/24/55. In other words, that the decision/Judgment in Suit NO. AB/24/55, shall be binding on the Plaintiffs/Respondents in respect of their Suit No. AB/29/55. Suit No. AB/24/55, then proceeded to trial. Evidence was led by the parties. On 2nd June, 1958, Taylor J. (as he then was), gave judgment in favour of the Defendants/Appellants and simultaneously, dismissed the case of the Plaintiffs/Respondents. The Plaintiffs/Respondents, appealed to this Court in Suit No. AB/24/55. They did not appeal against the dismissal of their own suit AB/29/55. In this Court, the Plaintiffs/Respondents' appeal, was successful and the suit was sent back to the High Court for re-trial. The suit was re-tried by Beckley, J. and the Plaintiffs/Respondents, won and the said suit was dismissed on 6<sup>th</sup> November, 1981. The Defendants/Appellants, appealed to the Court of Appeal which allowed their appeal and set aside the judgment of Beckley. J. The Plaintiffs/Respondents again, appealed to this Court which set aside the Judgment of the Court of Appeal and restored the said Judgment of Beckley. J. This Court, noted that in view of the earlier agreement if the parties before Taylor, J. (as he then was) that the decision, was still subsisting. That being the case, the Plaintiffs/Respondents, therefore, instituted the action which is the subject-matter of the instant appeal seeking among other things, for the vacation of the said judgment of Taylor J. From the Records, at the trial, three (3) witnesses testified for the Plaintiffs/Respondents, while six (6) witnesses testified for the Defendants/Appellants. After hearing addresses from the learned counsel for the parties, the learned trial Judge, after thoroughly evaluating the evidence including the documentary evidence before him and considering the addresses of the learned counsel for the parties, found in favour of the Plaintiffs/Respondents and granted the reliefs they claimed. In other words, the learned trial Judge, resolved in favour of the Plaintiffs/Respondents,

all the issues raised before him including the issue of *estoppel* or *res judicatam*.

As also stated in this Judgment, the court below, in a unanimous Judgment, dismissed the appeal of the Defendants/Appellants. In other words, there are concurrent findings of fact or Judgments, in  
 B favour of the Plaintiffs/Respondents by the two lower courts. The attitude of this Court in the circumstances, has been stated and re-stated in a line of decided authorities. In other words and **as a matter of policy which is now firmly established, this Court will not disturb or interfere with the concurrent findings of two**  
 C **lower courts unless, in exceptional and very clear circumstances. These include inter alia substantial error on the face of the Records, or the decision is not supported by evidence or the decision is reached on the application of wrong principles of law or procedure which had been violated or inadmissible evidence or no evidence at all, or in respect of findings which are perverse, unreasonable or, unsound.** See the previous and perhaps, recent judgments or cases of this Court –  
 D *Chikwendu v. Mbamali & anor. (1980) 3 & 4 S.C. 11; Enang v. Adu (1981) 11/12 S.C. 25 @ 42; (1981) 11 – 12 S.C. (Reprint) 17 @ 27; Nwadike & 2 ors. v. Ibekwe & 2 ors. (1987) 4 NWLR (Pt. 67) 718 @ 740; (1987) 12 S.C 14 - per Oputa, JSC who stated inter alia, that:*

F “an Appellant appealing to this Court and seeking to upset two concurrent findings in favour of the Respondent is thus faced with an uphill task of considerable magnitude”;

*Layinka & anor. V. Makinde & 5 ors. (2002) 5 S.C. (Pt.1) 109 @ 109 @ 113 - per Belgore, JSC, (as he then was later CJN) citing*  
 G *several other cases therein; Ogbu v. Wokoma (2005) 14 NWLR (Pt. 944) 118; (2005) 7 S.C. (Pt. II) 123 & 136; (2005) 7 SCNJ. 297 just to mention but a few.*

**I note that the Appellants, have not shown any of these reasons or circumstances in the instant appeal and I have not**  
 H **seen any except that the Appellants, are hell bent on a repetition and canvassing of the very issues which had been unequivocally and sufficiently, dealt with by the two lower courts. This Court will not indulge them.** It will not disturb or interfere.

Again, there is the settled or well known Latin maxim “*interest*



*Reipublicae ut sit finis litium*. - there must, in the public interest be an end to litigation. See the cases of. Aro v. Fabolude (1983) 2 S.C. 75 @ 83; (1983) NSCC Vol. 14 P. 43 @ 45; - per Aniagolu JSC. where it is stated inter alia, thus:

“.....public policy demands that there should be an end to litigation once a court of competent jurisdiction has settled, by a final decision, the matters in contention between the parties” and Nwadike & ors. v. Ibekwe (supra).

In the case of Prince Yaya Adigun & ors. v. Secretary, Iwo Local Government (1999) 5 S.C. (Pt.III) 1 @ 8. Achike, JSC, (of blessed memory) stated inter alia, as follows:

“Not only must the court not encourage prolongation of a dispute, it must also discourage prolongation of litigation”

See also the cases of *Nyambi & 6 ors. v. Osadim anor.* (1997) 1 SCNJ. 182 @ 192 per Onu, JSC. citing the cases of Prince Adigun D & ors. v. *Attorney of Oyo State & 18 ors.* (No.2) NWLR (Pt.55) 197 @ 231 which is also reported in (1987) 3 SCNJ. And *Akanbi & 3 ors. v. Alao & anor.* (1989) 3 NWLR (Pt.108) 116 @ 140; (1989) 5 S.C.1; *Okukuje v. Akwido* (2001) 1 SCNJ. 245 @ 282 citing the case of *Chief Omokhale v. Chief Esekhome* (1993) 8 NWLR (Pt.309) 58 @ 67 just to mention but a few.

Of equal importance, is also the well established principle of law which applies both in civil and criminal cases that no one/man shall/should be or ought to be vexed twice on the same ground or for one and the same cause of action or the same issues. It is expressed in also the Latin maxim of “*nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa*”. See the cases of *Aro v. Fabolude*; *Chief Omokhale v. Chief Esekhome* (both supra); *Chief Adomba & 3 ors. v. Odiese & 3 ors.* (1990) 1 NWLR (Pt.125) 165 @ 178; (1990) 1 S.C.N.J 135 to mention but a few. It is also rooted on public policy.

I note from the Records and paragraph 1.5 pages 5 to 7 of the Respondents’ Brief firstly, that the suit leading to the instant appeal, is a re-trial of the same suit which the Respondents had filed in the same High Court of Lagos State which came up before Longe, J. Upon an application by the Appellants that it should be struck out because according to them, it disclosed no reasonable cause of action, Longe, J. accordingly, struck out the suit/action. The Respon-

dents appealed to the Court of Appeal which allowed the appeal and held that the Statement of Claim, disclosed a reasonable cause of action. Instead of remitting the case back to the High Court for re-trial, it purported to act under Section 16 of the Court of Appeal Act 1976 and granted the relief sought by the Respondent's in their Statement of Claim and set aside the said Judgment of Taylor, J. (as he then was) in Suit AB/29/55. The Appellants, then appealed to this Court and submitted that the invocation or application of Section 16 of the said Act, was wrong in law in that as no Statement of Defence, was filed, the case was not ripe for hearing and that judgment could not have been delivered. This Court, sustained the argument and allowed the Appeal in part and remitted the case to the High Court for the Statement of Defence to be filed and evidence to be called by the parties, See the case of *Taiye Oshoboja v. Alhaji Surakatu I. Amuda & 2 ors. (1992) 6 NWLR (Pt.250) 690; (1992) 7 SCNJ. 317.*

Secondly, almost the same or similar issues (some differently worded or couched by the parties in the two lower courts), were formulated and distinctly and thoroughly dealt with by the two lower courts. In the trial court, the present or instant Issue 3 of the Appellants in respect of Estoppel was treated or dealt with by the learned trial Judge at pages 97 up to 103 of the Records. His Lordship, in resolving, the said issue, gave his reasons for finding in favour of the Respondents. In the court below, the same issue was thoroughly discussed or dealt with at pages 421 to 427 - per Oguntade, JCA (as he then was).

In respect of issue 4 of the Appellants which is substantially the same with Issue 1 of the Respondents both at the trial court at page 87 of the Records and in this Court although differently worded, the learned trial Judge, dealt with the same again exhaustively, at pages 89 to 95, 99 to 102 of the Records. His Lordship, found as a fact that both parties, and the identity of the land in dispute, were/are one and the same. He further found as a fact that both parties, claimed ownership which involves possession. As a matter of fact, His Lordship discredited the 1<sup>st</sup> and 2<sup>nd</sup> defendant/Appellants' witnesses and held that their evidence was contradictory and unsatisfactory and unreliable.. The court below affirmed the Judgment of the trial court.

Issue 2 of the Appellants, in my respectful view, has bearing so to say/speak, substantially, with the said issues 4, 5, 6 and 8 of the

Appellants and issue 2 of the Respondents. I have noted that the two lower courts, found that both parties, claimed ownership of the Sand in dispute.

As regards Issue 7 of the Appellants, the learned trial Judge at pages 108 and 109, found as a fact and held that Order 4 Rule 8 of the Judgment (Enforcement) Rules of Lagos State Cap 12, Laws of Lagos State of Nigeria 1973, is not applicable to the case. The Appellants raised the same issue in their Issue 3 in the court below. After dealing with it at pages 427 and 428 of the Records, it held that the suit was/is not statute-barred. Significantly, the Respondents in the suit leading to this appeal sought for an order of court to set aside, the said Judgment of Taylor J. and not to enforce or execute the said Judgment in respect of Suit AB/29/55. Period!

In respect of Issue 9 of the Appellants the same issue, which is at page 88 of the Records, was dealt with by the learned trial Judge at page 111 thereof and he held rightly in my view, that the Rule applies to enforcement of Judgments and deals with Judgments that are executor) and riot those for declarations. The court below, at pages 428 and 429 of the Records, held inter alia, as follows:

*“There nothing in the above Rule 18 (sic) Order 4 which makes it applicable to proceedings brought to set aside a judgment. Rather, the rule in my view only applies to processes brought jar list; execution of a Judgment. I therefore agree with the reasoning of the lower court on the point”.*

In respect of Issues 6 and 10 of the Appellants, in my respectful view, I hold that they are, non-issues having regard to all the circumstances of this case above discussed. This includes as I noted in this Judgment, that the land in dispute is one and the same - i.e. the identity is/was not in dispute. What is more, as noted by me earlier in this Judgment, the court below affirmed the said Judgment of the trial court. Specifically, as regards Issue 6, my quick answer is that the instant appeal, is not against the said Judgment of Beckley, J. - on 11th July, 1984 but against that of Obadina, J (as he then was). The issue is therefore, completely misconceived.

Finally, ***Note that and as rightly stated in the Respondents' Brief, there is no where either in the claim of the Respondents and I add or in the Records, where it was alleged or pleaded or admitted that the Respondent's title;***

***“is burdened by the alleged customary tenancy of the Appellants.”***

***More importantly, this issue was not raised or canvassed by the Appellants in any of their issues for determination in the two lower courts. I hold that they cannot now raise it.***

***B They CANNOT now, regard or parade themselves, as “customary tenants” of the Respondents.*** This is because, right from 1955 and their said suit which was eventually dismissed by this Court, they had claimed “ownership” of the land in dispute. This Court, had in effect., upheld the declaration of title claimed by the Respondents. ***C*** When the Appellants in their said suit AB/24/55 claimed for possession of the land in dispute, it was/is a concession or an admission, that they are not in possession of the land in dispute.

The Appellant perhaps, enjoy or have “gluttony” for unwar-  
D ranted and pro longed litigation of a dispute or subject-matter that this Court had long pronounced effectively upon. In 1992, this case had lasted 35 years. It is now about 54 years from when it started. No party is entitled to have such gluttony. It is regrettable and per-  
E haps, unfortunate. But this has boomeranged. They have again, lost out so to say/speak. As a matter of fact, I find as a fact and hold, with the greatest respect to the learned counsel for the Appellants, that this appeal, is unmeritorious and is grossly misconceived. It fails and it is accordingly dismissed. I hereby affirm the decision of the court  
F below affirming the Judgment of the trial court.

Costs follow the event. I wish I could have increased the costs, but as it is, the Respondents are entitled to costs of N50,000.00 (Fifty Thousand Naira) payable to them by the Appellants.

**G**

### **MUSDAPHER JSC**

I have read before now the judgment of my Lord Ogbuagu, JSC just delivered with which I entirely agree. In the aforesaid judgment, his Lordship has meticulously and exhaustively discussed all  
H the relevant issues submitted for the determination of the appeal, I respectfully adopt his reasonings as mine and accordingly find no merit in this appeal, I dismiss it. I abide by the order for costs proposed in the aforesaid judgment.

**MUKHTAR JSC**

This appeal that emanated from the judgment of the Court of Appeal, Lagos Division has fourteen grounds of appeal as per the amended notice of appeal. Married to the grounds of appeal are ten issues for determination in the appellant's brief of argument. The appellants' issues were adopted by the respondents in their brief of argument. An appellants reply brief of argument was filed by the appellants. While I agree that an appellant is allowed by law to file a reply brief of argument to the respondent's brief, the question I would like to ask is what is the said reply brief envisaged to contain? It is a direct response or argument that will hit the points raised in the respondents' brief, not a re opening of the argument on the issues already treated in the appellants' or respondents' brief of argument.

In the words of Niki Tobi, JCA (as he then was) in the case of Essien and others v. The Commissioner of Police 1996 5 NWLR part 449 page 489:-

*"A reply brief, as the name implies, must be a reply to the respondent's brief....."*

*A reply brief is not a forum for introducing or advancing fresh point or point of argument. That will be tantamount to re-opening the appeal from the side of the appellant."*

I will add here that a reply brief becomes unnecessary if all it focuses on is to answer or respond to each point raised in the respondent's brief, as by so doing the court is over burdened with gross repetition of arguments and facts. The reply brief in this appeal definitely does so.

The issues raised have been thoroughly dealt with in the lead judgment, so the need to treat all the issues in this contribution is obviated. I am inclined to highlight only issue (3) which in the appellants' brief of argument reads:-

*"Whether the principle's of res judicata or issue estoppel were fulfilled in this case."*

It is instructive to note that the plaintiffs/respondents made the following crucial averments in their fourth amended statement of claim:-

*"24. The plaintiffs say that the Defendant (long dispossessed from the and) is forever and for all purposes estoppel from contest-*

*ing or challenging the title rights and interest in any manner whatsoever, possessory or otherwise in the land situate lying and being at Ijegun, Isheri-Osibun in Alimosho Local Government of Lagos State known to both parties.*

B 31. *The plaintiffs say that when suit No. AB/24/55 went for re-trial before Beckley J. evidence was led to the customary history and root of title of both the Oshoboja Family and Fagbile Family in relation to the land in dispute, Beckley J. in his Judgment adjudged that the title of the Defendants in that case (the Plaintiffs herein) was more reliable, and consequently dismissed the case of the Oshoboja Family.*

C 33. *The Plaintiffs aver that the land suited upon and the land in dispute in Suit No. AB/24/55 and Suit No. AB/29/55 are one and the same land."*

D At this juncture, I would like to consider the doctrines of res judicata, and issue estoppel. According to the authors of Halsbury's Laws of England Fourth Edition, on page 860 at paragraph 975 -

E *"In order that a defence of res judicata may succeed it is necessary to show not only the cause of action was the same but also the plaintiff has had opportunity of recovery and but for his own fault might have recovered in the first action that which he seeks to recover in the second, A plea of res judicata must show either an actual merger, or that the same point has been actually decided between the same parties. Where the former judgment has been for the defendant, the conditions necessary to estoppel the plaintiff are not less stringent. It is not enough that the matter alleged to be estopped might have been claimed. It is necessary to show that it actually was so put in issue or claimed."*

F Then paragraph 977 on issue estoppel which states thus:-

G *"A party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of the first and second actions are different, the finding on a matter which came directly (not collaterally or incidentally) in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusive in a second action between the same parties and their privies....."*

H *The conditions for the application of the doctrine have been stated as*

being that:

(1) the same question was decided in both proceedings;

(2) the judicial decision said to create the estoppel was final;

and

(3) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.”

See the Nigerian cases of Nkanu & ors v. Onun & ors 1977 5 SC 13, Iyayi v. Eyigebe 1987 3 NWLR part 61 page 523, and Fadiora v. Gbadebo 1978 3 SC. 219.

It is instructive to note that the two lower courts bore the above principles in mind when they arrived at the decisions they made, as is manifested in the following findings:-

The learned trial judge having taken into consideration the pleadings and evidence in the case on the issue estoppel raised by the plaintiffs/respondents ventilated his view as is encapsulated below:-

*“I think Exhibit 'H' constitutes issue estoppel against the Oshoboja claim for declaration of title. See Amida & others vs Oshoboja (1984) 15 NSCC 531 (supra). The issue of title of the Oshoboja family in respect of the land in dispute has been decided by Beckley J. and affirmed by the Supreme Court in Exhibits G & H, and the claim of Oshoboja was dismissed.”*

This was affirmed by the lower court as per Oguntade J.C.A. (as he then was) in a lead judgment when he found thus:-

*“In Suit No. AB/24/55 decided by Beckley J., the parties, the issues (i.e. ownership of the land in dispute) the subject-matter are the same as in the current case. The findings of fact made by Beckley J. in AB/24/55 would therefore be relied upon in the current case as creating estoppel.”*

The above are concurrent findings of facts which are based on credible and reliable evidence. They are supported by evidence and are neither perverse nor can they be faulted. The position of the law is that such findings that are based on such evidence that are directly related to the matter in controversy will not be disturbed once the correct principles of law are properly applied. See Ogun v. Akinyelu & ors 2004 18 NWLR part 905 page 362, Alli v. Alesinloye 2000 6 NWLR part 660 page 177, and Woluchem v. Gudi 1981 5 SC page

291.

In this regard, this court has no business to interfere with the lower courts' findings and decisions on the issue estoppel, as they are correct and faultless. For the foregoing I resolve this issue in favour of the respondents, and dismiss the related grounds of appeal.

B It is my view that the treatment and outcome of this issue should dispose of this appeal, and so I will confine myself with the treatment of this issue only, the other issues having been thoroughly dealt with in the lead judgment. The lead judgment just delivered by my learned  
C brother Ogbuagu J.S.C. has already been read by me. I agree with the reasonings and conclusion reached in the lead judgment, that the appeal is devoid of any merit, and should be dismissed. The appeal is hereby dismissed. I abide by the consequential orders made in the lead judgment.

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### **MUNTAKA-COOMASSIE JSC**

E I have read before now the judgment rendered by my learned brother, Hon. Justice Ikechi Francis Ogbuagu JSC just delivered. Two important issues among others stand out clearly in this judgment, namely.

(i) There must be an end to litigation in the public interest - "Interest Rei publicae ut sit finis litium". - Akanbi V. Alao (1989) 3  
F NWLR (pt. 108) p. 118/140 per Craig JSC. It as also stressed by the Supreme Court which made similar statement in the case of John Omokhafa V. Esekhome (1993) 8 NWLR (pt. 309) p. 58.

"It is an application of the rule of public policy and in the interest of the common good that there should be an end to litigation.  
G This is covered by the well established doctrine, interest rei publicae ut sit finish"

See Okukuje V. Akwido (2001) 1 SCNJ 245 at 282.

H Another interesting point brought out by my learned Lord Ogbuagu JSC is the issue of concurrent judgment of the two Lower courts. The policy is that it will be very difficult for this court to interfere or disturb the concurrent findings of two lower courts unless, in exceptional and very clear circumstances; that is where there is substantial error on the face of the records, or the decision is not supported by evidence or is perverse, unreasonable or unsound.



In this appeal the court below affirmed the decision of the trial court and dismissed the appeal of the defendants/appellants. The decisions of the that court were sound and never perverse or unreasonable. Chikwendu V. Mbamali and Anor (1980) 3 & 4 SC 11.

In Ogbu V. Wokoma (2005) 7 SCNJ 299 at 316 Akintan JSC stated that:- B

*"There is no doubt that this appeal is against the concurrent findings of facts by the trial court and the Court of Appeal. The position of the law is that such findings of facts should not be disturbed by this court unless there are cogent and compelling reasons shown to justify disturbing those findings of facts. See Okeke V. Agbodike (1999) 14 NWLR V (pt. 638) 215 at 222 Ibenye V. Agwu (1998) 11 NWLR (pt. 574) 372; Alakija V. Abdulai (1998) 6 NWLR (pt. 552) 1; and Chukwu V. Nneji (1990) 6 NWLR (pt. 156) 363 "* C

That being the case, I adopt the reasoning and conclusion my D learned brother Ogbuagu JSC as mine. I share the annoyance expressed in the lead judgment by his Lordship to the effect that the matter is now about 54 year old I too hold that this appeal clearly lacks merit. It is therefore dismissed, the derision of the court below affirming that of the trial court is further affirmed by this court. I E endorse the order as to costs in favour of the respondents.

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### **FABIYI JSC**

I have had a preview of the judgment just handed out by my F learned brother, Ogbuagu, JSC. Without any hesitation, I agree with the reasons advanced to arrive at the conclusion that the appeal is devoid of merit and should be dismissed.

The contest between Oshoboja family of Ijegun and Fagbile G family of Ijegun over the same piece of land can now be said to be fairly chequered. Presently, there are five (5) decisive judgments between the same parties/privies in relation to the same subject matter to wit: land. This court in 1966 ordered a retrial of Suit No. AB/24/55 filed by the appellants herein and Suit No. AB/29/55 filed by the H respondents herein at the trial court before another judge other than Taylor, J. (as he then was). The suits were re-heard by Beckley, J. who found in favour of the respondents herein. This court affirmed same in 1981.

This court on 11th July, 1984 ordered a retrial of Suit No. AB/29/55 on the premise that the dismissal by Taylor, J. of same cannot stand in view of its judgement. Matter went before Obadina, J. (as he then was) and in 1996, he granted a declaration of title to the respondents and set aside the decision of Taylor, J. in Suit No. AB/29/55.

The appellants herein appealed to the Court of Appeal which on 20th June, 2006, confirmed the judgment of Obadina, J. This is a further appeal to this court.

The appellants who have consistently lost out in the long-drawn contest attempted to rake up an innocuous point which was not canvassed in the two lower courts. Despite the fact there is no where the respondents claimed or pleaded that 'their title is burdened by alleged customary tenancy of the appellants', the appellants brought it up and tried to make a big deal out of it. Right from 1955, the appellants, who laid claim to 'ownership', cannot, on appeal, turn round to attempt to hide under the cover of being 'customary tenants'. This is because there should be consistency in prosecuting a suit in the trial court as well as in appellate courts. There should be no somersault. Refer to *Ajide. v. Kelani (1985) 3 NWLR (Pt. 12) 248*.

In a rather sober fashion, the appellants urged this court to depart from its decision in *Arnida v. Oshoboja (1984) 7 SC 68* pursuant to Order 6 Rule 5 (4) of the Supreme Court Rules. It is their issue No. 9

I strongly feel that the appellants have an uphill task to perform in this respect. This is because this court would only be persuaded to depart from its previous decision in the following circumstance:-

- (a) If the previous decision is proved wrong.
- (b) If the previous decision is given per incuriam.
- (c) If the previous decision is proved to be perpetuating injustice.

This principle of law is so because this court has a twin duty to wit:

1. To see that justice is founded on the correct view of the law and that justice is not slaughtered on incorrect interpretation and application of the law and equity.
2. To see to the essence of the pursuance of the ideal of cer-

tainty of the law. See *Bakare v. L.S.C.S.C.* (1992) 8 NWLR (Pt.262) 641.

*Eperokun v. University of Lagos* (1986) 4 NWLR (Pt 34) 162; *FCSC v. Laoye* (1989) 12 NWLR (Pt. 106)652.

The totality of the appellants stand point in submissions canvassed on their behalf is that they want this court to re-evaluate evidence considered by Beckley, J. in an appeal heard by this court and determined against them in 1984. This court will always resist such an unwarranted invitation. We should not be drawn into a melee. See *Owie v. Igghiwi* (2005) 1 SC (Pt. 11) 16.

In *Layinka v. Makinde* (2002) 5 SC (Pt. 1) 109, this court, per Eso JSC, pronounced thus:-

*"it is clear all through 1944 to this day, the appellants had come up with various suits and lost to the respondents or their privies or D agents. In sum total, this matter on appeal is based on concurrent findings of the two lower courts on facts. No appellate court should disturb the concurrent findings like this unless of law or inadmissible evidence or no evidence at all. Going through a line of decisions, this court will not disturb a clear finding of fact by a lower court."*

The appellants have not given any convincing and compelling reason why this court should depart from its decision in *Amida v. Oshoboja* (supra). The decision has not been proved to be wrong or given per incuriam. It has not been proved to be perpetuating injustice in any form. The ideal of certainty of the law should be maintained. In short, the subtle invitation to review the above stated decision is without foundation and it is refused.

In previous occasions, the appellants have taken their defeat in each round of the contest as a knock down. It is hoped that they will now appreciate that this defeat is a knock-out. There should be an end to an unwarranted, protracted litigation. I say no more.

It is for the above reasons and the fuller ones contained in the judgment of my learned brother that I feel propelled to dismiss this appeal. I order accordingly and endorse all consequential orders in the lead judgment; that relating to costs inclusive.