

SUPREME COURT OF NIGERIA
5TH MARCH, 2010. SC. 83/2004
CORAM:- G. A. OGUNTADE, M. MOHAMMED,
W. S. N. ONNOGHEN, I. F. OGBUAGU,
M. S. MUNTAKA-COOMASSIE, JJSC

MR. JIMOH ALABI ALAPO APPELLANT
AND

1. MR. AUGUSTUS O. AGBOKERE RESPONDENTS

2. MRS. JANET I. AGBOKERE

ESTOPPEL - Res judicata - Applicability - As both parties and subject matter - Are same in past and present suit - Appellants are misguided in litigating the matter afresh - As it has been determined by the judgment in the prior suit (H1)

ESTOPPEL - Res judicata - Rationale - Whether based on rightness of judgment - The rationale for the doctrine is not because the judgment is right - But that there needs be an end to litigation (H2)

FACTS

The original plaintiffs, substituted by the present appellants, sued defendants/respondents at the High Court of Lagos, claiming declaration of title to the property, known as 17, Olusola Keku Street, Itire, Lagos, ("the property in dispute"), as well as damages for trespass. From the pleadings of the parties, it was common ground that respondents had earlier taken appellant's predecessors-in-title to court in suit No. ID/333/80 over a parcel of land, judgment in which suit, as affirmed by Court of Appeal in Appeal No. CA/L/168/87, was in favour of respondents. It was also common ground that respondents had on the basis of the judgment in the earlier suit obtained a warrant of possession in respect of the property in dispute and forcefully took possession of same. It was in consequence of this action of forceful possession that appellant instituted the suit leading to the present appeal against respondents.

The case of appellant was that the land, subject matter of the earlier suit, was not the property in dispute. On the other hand, respondents maintained that it was and that the instant suit of appel-

lant was caught up by the principle of estoppel *per rem judicata*. After hearing, trial court gave judgment to appellant as it held that the land in the earlier suit was different from the property in dispute. Aggrieved, respondents appealed to Court of Appeal which held otherwise and consequently allowed the appeal. Dissatisfied, appellants have brought this appeal against the judgment of Court of Appeal.

ISSUE FOR DETERMINATION

Whether or not the land in dispute in suit No. ID/333/80 and appeal No. GA/L/168/87 was the same one in dispute in the current case.

HELD (Unanimously dismissing the appeal per **OGUNTADE JSC**) ***Res judicata - Applicability - Suit No ID/333/80***

1. It is worth Emphasizing here that the predecessors-in-title of the plaintiffs/appellants in this appeal were the defendants in ID/333/80 and the predecessors-in- title of the defendants/respondents were the plaintiffs. The subject-matter or property in dispute in the said ID/333/80 was No. 17 Olusola Keku Street, Ikate, Surulere. The present plaintiffs/appellants brought an appeal against the judgment of Hotonu J. The said appeal CA/L/168/87 was dismissed. No further appeal was brought to the Supreme Court and one would have thought that the judgment of the Court of Appeal had finally settled the dispute between the parties.

However, the plaintiffs/appellants brought a fresh suit laying a claim of ownership to the same subject-matter of the suit in ID/333/80 as CA/L/168/87 No. 17 Olusola Keku Street, Itire, Lagos State.

The plaintiffs/appellants were obviously misguided in litigating afresh a matter that has been solemnly and finally determined in the judgments in ID/333/80 and CA/L/168/187. Their remedy lay in appealing against the judgment not in commencing afresh suit.
(pp. 822 A/823 B)

Res judicata - Rationale - Whether rightness of judgment

2. It is apparent that what the plaintiffs/appellants tried to show by their suit in this appeal was that the judgments in ID/333/80 and CA/L/168/87 given by the High Court and the Court of Appeal respectively were wrong. This, they cannot do. A judgment between the same parties over the same subject-matter and issues is forever bind-

ing on their privies not because the judgment is right. The rationale behind the doctrine of estoppel is expressed in the legal maxim - *Interest reipublicae ut sit finis litium*. It is in the interest of the State that there must be an end to litigation.

The plaintiffs/appellants were obviously misguided in litigating afresh a matter that has been solemnly and finally determined in the judgments in ID/333/80 and CA/L/168/187. Their remedy lay in appealing against the judgment not in commencing a fresh suit. (p. 822 E)

REPRESENTATION

Olusola Idowu, Esq., for Appellant

Layi, Arikewuyo Esq., for the Respondent

CASES REFERRED TO

Ibuluya v. Dikibo (1976) 6 S.C. 97 at 104

Madukolu v. Nkemdilim (1962), 2 SCNLR, 341

Agbani v. Obi (1998) 2 NWLR (pt. 536) 1 at 14

Odejewwedgeranu v. Madam Echanokpe (1987) 1 NWLR (pt.52) 633

Mrs. Ronke Omiyale v. Macaulay & 4 Ors (2009) 3 - 4 S. C. 1 @ 10 - 16

Nnaemeka Agu in Nwosu v. Udeaja (1990), 1 NWLR, (Pt. 125), 188 at 221

Afolabi & 2 Ors V. Governor of Osun State & 3 Ors. (2003) 7 SCNJ 27 @ 33, 36, (2003) 13 NWLR (pt. 836) 119 @ 129 -130

LEAD JUDGMENT BY OGUNTADE JSC

The original plaintiffs at the High Court of Lagos State were Alhaji Moshood Ajala and Ajala Yekini Sowunmi. They died in the course of the proceedings at the trial court and the present appellant was substituted for them. The claims of the plaintiff now appellant as stated in his further amended Statement of Claim read:

"1. Declaration that the plaintiff is entitled to a statutory right of occupancy in respect of the parcel of land edged GREEN in Plan No. CD/97/83 drawn by C. Olu Dawodu, Licensed Surveyor and also edged yellow in Plan Nos. MAH.01/L/89 and MAH09/L/89 drawn by M. A. Hassan and more particularly called 17, Olusola Keku Street, Itire, Lagos State.

2. *The sum of N120,000.00 (One hundred and twenty thousand Naira) being Special and General damages suffered by the plaintiff as a result of trespass committed by the defendants on the building and land in dispute herein and the Defendants occupation of same.*

B Particulars of Special Damages

A. *Cost of the repairs of the building on the land in dispute - N70,350.00*

C *B. Rent for the five 3-bedroom flats and one Warehouse at the rate of N300.00 per Flat per month from 1st January, 1990 to 29th August, 1991 - N36,000.00*

C. Rent for the one mini Flat at the rate of N250.00 per month from 1-1-90 to 20-8-91 - N6,000.00
N111,000.00

D *General damages - N9,000.00"*

E The parties filed and exchanged pleadings after which the suit was tried by Sotuminu J (as she then was). On 23/12/99, the trial judge gave judgment in favour of the plaintiff. She granted the declaration sought and awarded N70,350.00 as special damages in favour of the plaintiffs.

F The defendants were dissatisfied with the judgment of the trial court. They brought an appeal against it before the Court of Appeal, Lagos (hereinafter referred to as 'the court below'). On 22/05/03, the court below allowed the defendants' appeal and the judgment of the trial court was set aside. The plaintiffs were dissatisfied with the judgment of the court below and have come on a final appeal before this Court. In the appellant's brief filed on behalf of the plaintiffs, the issues for determination in this appeal were identified as the following:

"(i) *Whether the learned Justices of the Court of Appeal were right in their decision in holding that the claims of the appellant were caught by the doctrine of 'RES JUDICATA'.*

H (ii) *Whether the learned Justices of the Court of Appeal were right in their decision when they held that the composite plans filed by the parties were irrelevant to the determination of this suit.*

(iii) *Whether the learned Justices of the Court of Appeal were right to have held that the learned trial judge did not properly evalu-*

ate the evidence before her at the trial".

Before I discuss the above issues for determination, it is apposite to examine and understand the nature of the dispute between the parties as stated in their pleadings. In paragraphs 11 to 19 of their Further Amended Statement of claim, the plaintiffs/appellants pleaded the cause of the dispute between the parties thus: B

"11. The Plaintiff states further that the Onikate Family's title to all Ikate land was confirmed in Suit No. LD/446/72- K. IDEWU & Ors. v. W. ODUBAYO & ORS. The judgment in this case will be relied upon at the trial of this action.

12. The Plaintiff states that Moshood Ajala purchased the land in dispute from the Onikate family in 1975 and obtained a Deed of Conveyance dated 12th July, 1976 and registered as No. 59 at page 59 in Volume 1575 at Lands Registry, Lagos in respect of the land. C

13. The Plaintiff states that Ajala's Deed of Conveyance was signed by Chief Odewale Bada then the Head of Onikate family and Kasali Kadiri representing the entire Onikate family. D

14. The Plaintiff states that after the aforementioned sale, Ajala was put into possession by the Vendors in the presence of witnesses and representatives of the Onikate family and he has since been in effective possession of the land in dispute up to his death in 1992. E

15. The Plaintiff states that Ajala built a house on the land in dispute and he has been in effective possession and has let the house out to tenants.

16. The Plaintiff states that though the Defendants took Ajala to court in suit No. ID/333/80 in respect of a parcel of land different and distinct from the one in dispute herein, the Defendants have been harassing him on the land in dispute in this case which lawfully belongs to Ajala. F

17. The Plaintiff will contend at the trial of this suit that the land in dispute in suit No. ID/333/80 is different from the one in dispute this suit. G

18. The Defendants being aware that the land in dispute herein does not belong to them fraudulently obtained a Warrant of Possession in respect of same and forcefully ejected Ajala and his tenants in the said premises known as 17, Olusola Keku Street, Ikate, Surulere, Lagos State on the 14th December, 1989. H

19. *Ajala thereafter applied to court to set aside the warrant of possession and in a considered ruling delivered by the Court on the 2nd of March, 1990, the said Warrant of Possession obtained by the Defendants in suit No. ED/ 333/80 in respect of the land in dispute herein was set aside and declared null and void.*

B 20. *The plaintiff states that despite the setting aside of the warrant of possession the defendants remained in possession of the land/house in dispute and Alhaji Ajala had to apply to court again for a warrant of possession to eject them from the premises which was granted on the 19th day of July, 1991 and the defendants and their agents were ejected on the 29th August, 1991."*

(Underlining mine)

The defendant/respondents in their 3rd amended statement of defence in paragraphs 6 - 14 pleaded thus:

D "6. *With reference to paragraph 12 of the amended statement of claim the defendants state that instrument dated 17/7/1976 and registered as No. 59 at page 59 in volume 1575 Lagos is the same instrument adduced in defence of suit ID/333/80 and appeal CAL/168/87 wherein the superiority of defendants instrument 42/*
E *42/1678, Lagos over that of plaintiff 59/59/1575, Lagos was established and confirmed.*

7. *Paragraphs 13 and 14 of the amended statement of claim are denied and plaintiff is put in strict proof of all the allegations therein contained.*

F 8. *With regards to paragraph 15 of the amended statement of claim the defendants admit that plaintiff viet armis (sic) by use of thugs and hirelings erected a building on 17, Olushola Keku Street, Ikate despite the protest and reports lodged with law enforcement officers against the unlawful and unauthorized activities of the plaintiff. At no time was plaintiff in effective possession de jure even though plaintiff assumed defacto occupation and possession of 17, Olushola Keku Street, Ikate.*

H 9. *Paragraphs 16, 17 and 18 of the amended statement of claim are denied. Plaintiff has just one property along Olushola Keku Street and it is the subject matter of his counter-claim in suit No. ID/ 333/80 as 17, Olushola Keku Street, Ikate.*

10. *That in suit No. ID/333/80 the reliefs sought for are -*
(1) *Declaration*

(2) Damages for injunction

(3) Perpetual injunction

and these reliefs were granted by the High Court as per Judgment of honourable Justice Hotonu (retired) dated 18/7/1985 and confirmed in the Court of Appeal in their Judgment of 15/3/1989 in CA/L/169/87. B

(11) In 1986 the defendants in reliance on the 2 judgments stated in paragraph 10 above instituted an action for possession against the 6 tenants at No. 17, Olushola Keku Street, Ikata for possession in suit No. ID/539/89.

(12) The defendants without waiting for the outcome of suit No. ID/539/86 applied for warrant for possession to disposes (sic) the occupants of 17, Olushola Keku Street in an ex parte application before Honourable Justice M. O. Onalaja; the warrant was granted and defendants duly executed same. C D

13. Before the application for warrant for possession was made there was a pending litigation, i.e.

(a) Suit No. ID/539/86 which seek for possession of the same tenants in 17, Olushola Keku Street, Ikate which has not been decided and the pendency of the action was never disclosed in the ex parte application also. E

(b) Suit No. ID/333/80 and Appeal there from never authorized granting of possession which is not one of the reliefs sought as stated in paragraph 10 above.

In consequence the warrant for possession was nullified by Honourable Justice M. O. Onalaja for non-disclosure of material facts. F

14. The Defendants are the owners of the plot of land situate lying and being at Ikate, Surulere, the pieces of land measures 50 x 200 ft. and stretching from No. 23, Gasper Street, to 17, Olushola Keku Street in Ikate. G

The averments reproduced above from the pleadings of the parties clearly show that the dispute between the parties was all as to whether or not the judgment given by the High Court of Lagos State in suit No. ID/333/80 which was affirmed by the Court of Appeal in appeal No. CA/L/168/87 was in respect of the same land in dispute in the suit which the plaintiffs/appellant brought to court in the current case. In other words whereas the defendants/respondents contended before the two courts below that the case of the plaintiffs/appellants H

was caught by the defence of estoppel per rem judicatam, it was the case of the plaintiffs/ respondents that the said defence was not available to the defendants/respondents on the ground that the subject matters in suit No. ID/333/80 and appeal No. CA/L/168/87 were not the same as that in dispute in the current case.

B The trial court took the view that the lands in the previous and the current case were not the same whilst the court below took a contrary view. The issues for determination in this appeal as put across by the parties could be easily subsumed under the simple question whether or not the land in dispute in suit No. ID/333/80 and appeal C No. CA/L/168/87 was the same one in dispute in the current case. In answering that simple question the trial court at pages 443 to 444 of the record reasoned thus:

"Consequently apply the above authorities to the instant case D made me to look carefully, critically and adversely with the evidence of Plaintiff Witness 1 and Defence Witness 1 with the survey plans tendered in Suit No. ID/333/80 and in this case with the consideration of the Court of Appeal that the identity of the land covered two plots or parcels of land occupied with the testimony of 1st Defendant E described above that-

'The land composite plans in the two exhibits i.e. exhibits E 1 and M are not the same. No one can say that the plots are one and the same,'

F *leads me irresistibly to accept the emphatic and unequivocal testimony of Plaintiff Witness 1, the Licensed Surveyor of the Plaintiff that the land in dispute in Suit ID/333/80 and the present action are not the same only confirms the obvious as already held by the Court of Appeal in exhibit 'P' and suggested the appointment of independent Licensed Surveyor. I therefore so hold and reject the evidence G of the Defence witness 1, the Licensed Surveyor of the Defendants and the 1st Defendant that the land litigated upon in Suit No. ID/333/80 and the present action are the same. Having so held that the land in dispute in suit No. ID/333/80 is different from the land now in H dispute makes me hold that the present action is not caught or affected by the rule of Res judicata where the three conditions pleaded in paragraph 28 of the statement of defence..... for the rule to apply as the land.... subject matter is not the same. This knocks the bottom off the defence and the plea is rejected.*

Res Judicata was defined by Nnaemeka Agu in *Nwosu v. Udeaja* (1990), 1 NWLR, (Pt. 125), 188 at 221, *S.C. Madukolu v. Nkemdilim* (1962), 2 SCNLR, 341 and *Agbani v. Obi* (1998) 2 NWLR (pt. 536) 1 at 14 SC that 'To sustain a plea of *res judicata* the party pleading it must satisfy the following conditions to wit:

(a) that the parties or their privies as the case may be, are the same in the present suit as in the previous suit;

(b) that the issue and subject matter are the same in the present suit as in the previous suit;

(c) that the adjudication in the previous suit have been given by a Court of competent jurisdiction and

(d) that the previous decision must have finally decided the issues between the parties.'

The plea fails as the land in dispute in this case held by me as not being the same land in suit. ID/333/80"

The court below per Galadima J.C.A. (who wrote the lead judgment) said:

"Suit No. ID/333/80 was pleaded and the ownership of No. 17 Olusola Keku Street have been decided by this Court in Appeal No. CA/L/168/87. It was not necessary to re-open the issue. It is noted that Exhibits E - E 1 was the composite plan of the Respondent. It is my view that the purport of these Exhibits is to re-open and relitigate the issue thereby repeating the evidence already decided *inter partes*, contrary to the principle of law that there must be an end to litigation: See *Ezenwa v. Onward* 1(supra) and *Aro v. Foboluade* (1983) 2 SC. 75. It is not open to the Respondent, by this subsequent suit to show that the issue of ownership was wrongly determined by the two previous courts. If the Respondent was dissatisfied with the judgment of the Appeal Court, in Appeal No. CA/L/168/87, the only remedy open is by way of appeal to the Supreme Court.

The parties having by their evidence admitted that there is only one No. 17 Olusola Street, Ikate Surulere at every material time the burden to prove that the judgment in Suit No. LA./168/87 relates for another No. 17, Olusola Keku Street, Ikate, Surulere, remains on the Respondent. It is my respectful view that the lower court was in error when it shifted the burden of proof of the land in dispute before him from the alleged 'other land' in dispute No. ID/333/80 on the Appellant. As indicated in their pleadings it the Respondent who really al-

leged that the land in dispute in the earlier suit is not the same subject matter put before the lower court.

I am far more convinced and I agree with the learned counsel for the Appellant that the parties having been in agreement as regards to the existence of only one No. 17, Olusola Keku Street, Ikate.

B *This makes both survey plan and composite plan really absolutely irrelevant to the proper determination of the identity of the land in dispute.*

C *The sum total of the evidence in-Chief and Cross-examination of PW1 for the Respondent and DW3 for the Appellants has made it crystal clear that the land in dispute and being litigated before the lower court is well known to both parties, as that situate at No. 17, Olusola Keku Street, Ikate Surulere, Lagos. This being so the argument on the issue of Survey Plan of composite plan is dispensable".*

D *The simple issue in dispute as I observed above is whether or not the property previously litigated upon by the parties is the same one in dispute in the current case. In Ekpoke v. Usilo (1978) 6-7 SC. 187 198-199, this Court per Obaseki J.S.C. observed:*

E *"To found a plea of estoppel per rem judicatam, the defendant/respondent had to satisfy the court that:*

(1) The parties were the same;

(2) That the land was the same; and

(3) That the subject matter of the claim was the same.

F *In considering a plea of res judicata, one of the criteria of the identity of the two actions is the inquiry whether the same evidence would support both. (Madukolu & Others. V. Nkemdilim (1962) 1 All N. L.R. 1 587."*

G *See also Agunwa v. Onwukwe (1962) All N.L.R. 537; Coker v. Sanyaolu (1976) 9-10 SC. 203.*

In suit No. ID/333/80, claims made by the present defendant/respondents as plaintiffs read:

"A declaration that the plaintiffs are entitled to-

H *cel of Land known as 17 Olusola Keku, Street Ikate, Surulere*

(b) the sum of N15,000.00 as special and general damages for trespass and in the alternative the sum of N15,000.00 as general damages.

(c) Perpetual injunction restraining the defendants, their ser-

vants and/or agents from further trespassing on the land."

The parties in ID/333/80 who were the predecessors-in-title of the parties in the present appeal were all ad idem in their testimony as to the identity of the property in dispute between them; and that property was 17 Olusola Keku Street, Ikate, Surulere. In the judgment of the judge in the case, Hotonu J. at page 3 of exhibit 'O' (the judgment) said: B

"The two defendants and their witnesses agreed in their evidence that the land in dispute was at 17 Olusola Keku Street, Ikate, Surulere. They did not dispute the fact that P.W.1 has been on the land since 1956 and has transferred his leasehold interest in the land to 1st plaintiff in 1967. They have however denied seeing any fence and structure on the land when it was conveyed to 1st defendant in 1976. They said that at that time it was a bush with palm trees which were cleared before 1st defendant started to build house on it." C
D

And at page 10 of the same judgment exhibit 'O', Hotonu J. said:

"The defendants counter-claimed N10,000.00 against the plaintiffs as special and general damages for setting ablaze 1st defendants building on the land in 1978. I have already said that the defendants were trespassers on the land and as such they have no right to claim damages from the plaintiffs. What really happened according to the evidence is that 1st defendant through 2nd defendant got conveyed to him piece of land at Olusola Keku Street, Ikate and was physically shown a different land in dispute already in exclusive possession of the 1st plaintiff. In the circumstances the defendants' counter-claim fails." E
F

In his final conclusion, Hotonu J. said:

"In the result, the plaintiffs' claim succeeds. On the other hand the defendants' counter-claim fails and is dismissed. The order of the court shall therefore be as follows:- G

(a) A declaration of the statutory right of occupancy in favour of the plaintiffs Augustus Olugbenro Agbokere and Janet Idowu Agbokere to all that piece of land 50 feet by 200 feet known as 17 Olusola Keku Street Ikate, Surulere shown on composite survey plan No. CD/97/83 of 6th May, 1983 prepared by C. Olu Dawodu Licensed Surveyor. H

(b) The two defendants shall jointly and severally on or before

1st September, 1985 pay to the plaintiffs the sum of N2,000.00 as general damages for trespassing on the land.

(c) Perpetual injunction restraining the defendants, their servants and/or agents from further trespassing on the land.”

It is worth Emphasizing here that the predecessors-in-title of the plaintiffs/appellants in this appeal were the defendants in ID/333/80 and the predecessors-in- title of the defendants/respondents were the plaintiffs. The subject-matter or property in dispute in the said ID/333/80 was No. 17 Olusola Keku Street, Ikate, Surulere. The present plaintiffs/appellants brought an appeal against the judgment of Hotonu J. The said appeal CA/L/168/87 was dismissed. No further appeal was brought to the Supreme Court and one would have thought that the judgment of the Court of Appeal had finally settled the dispute between the parties.

However, the plaintiffs/appellants brought a fresh suit laying a claim of ownership to the same subject-matter of the suit in ID/333/80 as CA/L/168/87 No. 17 Olusola Keku Street, Itire, Lagos State . In the evidence before the trial court the plaintiffs/appellants sought to show that the survey plan drawn by Surveyor Hassan indicated that the land in dispute had belonged to their predecessors-in- title who had lost in the litigation over the same property in 17 Olusola Keku Street, Ikate, Lagos.

It is apparent that what the plaintiffs/appellants tried to show by their suit in this appeal was that the judgments in ID/333/80 and CA/L/168/87 given by the High Court and the Court of Appeal respectively were wrong. This, they cannot do. A judgment between the same parties over the same subject-matter and issues is forever binding on their privies not because the judgment is right. The rationale behind the doctrine of estoppel is expressed in the legal maxim - *Interest reipublicae ut sit finis litium*. It is in the interest of the State that there must be an end to litigation. In *Ibuluya v. Dikibo* (1976) 6 S.C. 97 at 104, this Court per Alexander C.J.N. observed:

“The law applicable in this situation is as stated in Spencer-Power and Turner, Res Judicata, Second Edition at page 14 para. 15, where the following passage, with which we find ourselves in agreement, occurs -

It is not essential or even relevant, to prove that the decision relied upon to found an estoppel is itself correct or well founded in law or fact; if it is pronounced as a final judicial decision, by a tribunal having jurisdiction, as to the same question and between the same parties, it will be conclusively deemed correct as between these parties unless and until upset on appeal." B

The plaintiffs/appellants were obviously misguided in litigating afresh a matter that has been solemnly and finally determined in the judgments in ID/333/80 and CA/L/168/187. Their remedy lay in appealing against the judgment not in commencing a fresh suit. C

This appeal is unmeritorious. It is dismissed with N50,000.00 costs against the plaintiffs/appellants in favour of the defendants/respondents.

MOHAMMED JSC

I have been privileged before today of reading the judgment of my learned brother Oguntade, JSC which has just been delivered. I entirely agree with him that the Court of Appeal was right in its judgment in allowing the appeal before it on the ground that the issue of estoppel Per rem-judicatam applied to the present case. I hereby adopt the judgment as mine as I have nothing useful to add to it. E

Accordingly I also hereby dismiss this appeal with N50,000.00 costs to the Respondents. F

ONNOGHEN JSC

I have had the advantage of reading in draft the lead judgment of my learned brother OGUNTADE, JSC just delivered. G

I agree with his reasoning and conclusion that the appeal is without merit and ought to be dismissed.

My learned brother has exhaustively dealt with the relevant issues raised in the appeal and I have nothing useful to add. I therefore dismiss the appeal for lack of merit and abide by the consequential orders made in the said lead judgment including the order as to costs. H

Appeal dismissed.

OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Lagos Division, (hereinafter called “the court below”) delivered on 22nd May, 2003, allowing the appeal of the Respondents and setting
 B aside the Judgment of the Lagos State High Court, sitting in Lagos - per Sotuminu, J. (as he/she then was) delivered on 23rd December, 1999.

Dissatisfied with the said decision, the Appellant has appealed
 C to this Court on six (6) grounds of appeal. He has formulated three (3) issues for determination, namely,

- “(i) *Whether the Learned Justices of the Court of Appeal were right in their decision in holding that the claims of the Appellants were caught by the doctrine “RES JUDICATA”.*
- D “(ii) *Whether the Learned Justices of the Court of Appeal were right in their decision when they held that the composite plans filed by the parties were irrelevant to the determination of this suit.*
- “(iii) *Whether the Learned Justices of the Court of Appeal were right to have held that the learned trial judge did not properly evalu-*
 E *ate the evidence before her at the trial.*

I note that issue (i) is stated to be covered by Grounds 1, 2 and 3 while issue (ii) is covered by Grounds 4 and 5 and issue 3 (iii) is related to Ground 6. It appears to me from para. 2.00 of the Re-
 F spondents’ Brief, that the three issues of the Appellant have been adopted by the Respondents as the arguments in respect thereof, are in that sequence as it is stated “Argument on issues as formulated by the Appellant’s counsel.”

I note that the Respondents at page 170 of the Records through
 G their learned counsel, had brought an application to terminate the suit before the trial court by raising the issue of res judicata. For reasons that appear at pages 173 and 174, thereof, the learned trial Judge, dismissed the application hence the suit went into full blown hearing.

H In my respectful but firm view, the gravamen or crucial issue that calls for determination, is whether or not the previous Suit No. *ID/333/80* is the same as Suit *No. ID/630/89* that has led to this appeal. It is in fact covered under issue (i) of the parties. - i.e. it is all about the doctrine of res judicata. I have had the privilege and ad-

vantage of reading before now, the lead Judgment of my learned brother, Oguntade, JSC just delivered. I agree with his reasoning and conclusion that the appeal has no merit. However, for purposes of emphasis, I will make my own brief contribution. I note that while the Respondents insist right from the trial court, that estoppel per rem B
judicatam is applicable, the Appellant maintains that it does not. While the trial court held that the land, the subject matter of the dispute, is not the same, the court below, held that it is the same.

The doctrine of this plea, has been established for a very long time in a number of decided authorities. If I may start, as far back as 1959, in the case of *Nwaneri V. Oruwa (1959) 4 FSC 13* - per Abbot C
A, CJF; in 1976, *Coker V. Sanyolu (1976) 9 - 10 S.C. 203; (1976) 9 - 10 S.C. (Reprint) 126*; in 1977, in *Nkanu v. Onun (1977) 5 S.C. 13; (1977) 5 S.C. (Reprint) 12*; in 1978, in *Ekpoke v. Usifo (1978) 6 - 7 S.C. 187; (1978) 6-7 S.C. (Reprint) 127*, in 1987, in D
Odejewwedgeranu v. Madam Echanokpe (1987) 1 NWLR (pt. 52) 633; (1987) 3 SCNJ 51 in 1990s; (2003), in *Afolabi & 2 Ors V. Governor of Osun State & 3 Ors. (2003) 7 SCNJ 27 @ 33, 36, (2003) 13 NWLR (pt. 836) 119 @ 129 -130* and the latest is in 2009, in *Mrs. Ronke Omiyale v. Macaulay & 4 Ors (2009) 3 - 4 S. C. 1 @ 10 - 16* E
-per Oguntade, JSC. Incidentally, the case of *Afolabi & ors V. Governor of Osun State* (supra) is also cited and relied on among others in the Appellant's Brief.

I or one may ask the Appellant - Are there two *No. 17 Olusola F
Keku Street, Ikate Surulere, Lagos* which should have enabled the learned trial Judge, to know which of the two was litigated upon in the said two suits? The court below, stated as page 575 of the Records inter alia, as follows:-

*"The parties having by their evidence admitted that there is G
only one No. 17 Olusola Street, Ikate Surulere at every material (sic) (meaning material) time the burden to prove that the judgment in Suit No. LA/168/87 relates to another No.17 Olusola Keku Street, Ikate, Surulere, remains on the Respondent (now the Appellant). It is my respectful view that the lower court was in error when it shifted H
the burden of proof of the land in dispute before him from the alleged "other land" in dispute No. ID/333/80 on the Appellant" (now Respondent).*

In other words, the plea of res judicata should have failed in

view of the evidence including the Exhibits, if and only if, the Appellant, had shown that there was another No.17 Olusola Keku Street, Ikeate Surulere, Lagos to which the judgments in the two suits i.e. Nos. ID/333/80 and CA/L/168/87 could be attached. But the Appellant and the trial court, were saying that the judgments, are in respect of “other land” in dispute.

On evaluation of the evidence before the trial court, the court below per Galadima, JCA, stated at page 582 of the Records, inter alia, as follows:

“*With due respect to the learned trial judge, it seems to me failed to consider evidence of various witnesses and all the issues that have been raised before her from (sic) (meaning for) determination before arriving at her conclusion.*”

I agree with the submission of the learned counsel for the Respondents to the effect that a community reading of the pleadings and the evidence before the trial court, shows conclusively that the conclusion of the learned trial Judge, with respect was/is totally erroneous and at variance with the evidence before her by the parties and the Respondents in particular. This in my respectful view, occasioned a miscarriage of justice to the Respondents. This Court just as the court below, will not allow this to stand.

It is from the foregoing and the said further lead judgment of my learned brother, Oguntade, JSC, that I too, dismiss this appeal. I hereby affirm the decision of the court below and I accordingly, set aside the judgment of the trial court as being with respect, perverse. Costs follow the events. I too, award N50.000.00 (Fifty Thousand Naira) costs in favour of the Respondents payable to them by Appellant.

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MUNTAKA-COOMASSIE JSC

For the reasons given in the leading judgment prepared by my learned brother, Oguntade JSC which I hereby adopt, I agree that there is no merit in the appeal and accordingly I dismiss it. I abide by the order on costs made in the said leading judgment.