

SUPREME COURT OF NIGERIA

20TH MAY, 2011. SC.184/2000

**CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F. TABAI,
I. T. MUHAMMAD, B. RHODES-VIVOUR, JJSC**

1. CHIEF IMAM BUSARI IDOWU DAUDA
2. MR. IDOWU ONIYIDE APPELLANTS
(For themselves and on behalf of
Elete Chieftaincy Family)
(Substituted by Order of Court)
AND
1. THE HON. ATTORNEY-GENERAL
OF LAGOS STATE & 5 others RESPONDENTS

LAND LAW - Title - Pleadings and evidence - Sufficiency of - Plaintiffs failed to establish a better title - Since they merely stated that their grandfathers settled on the land many years ago (H1)

ESTOPPEL - Res judicata - Conclusive nature of judgment - Applies in this case - A successful plea of res judicata precludes an attempt to re-litigate the action (H2)

LAND LAW - Customary rights - Conferment of chieftaincy - Condition precedent - Right to create and confer chieftaincy is tied to ownership of the land - But appellants have failed to establish their title - As such they cannot be granted the reliefs (H3)

FACTS

Plaintiffs/appellants commenced this action by a writ of summons filed at High Court of Lagos State, Ikeja on 14th July, 1978, against defendants/respondents. Pleadings were filed and exchanged between the parties. In the concluding paragraphs of the amended statement of claim dated 7th March, 1988 and filed on 10th March, 1988, appellants claimed the following reliefs inter alia against respondents: A Declaration that the Elete chieftaincy family is the only people entitled to create and/or confer chieftaincy titles on all or any of the villages within the Elete division.

The matter then proceeded to trial which involved the testi-

mony of 9 witnesses for appellants and 4 witnesses for respondents. There were quite a number of exhibits including exhibits 5 and 9 which were previous court judgments of High Court and Court of Appeal respectively on the same subject matter. On 12th January, 1990, the Court in its judgment partly granted the relief sought by appellants. Dissatisfied with the aforesaid judgment, respondents proceeded on appeal to Court of Appeal, Lagos division. In its judgment on 8th of July, 1999, the appeal was allowed and judgment of the trial Court was set aside. In its place was substituted a judgment dismissing appellants' claim. Appellants were aggrieved and have appealed to Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether the lower court correctly identified/formulated the issues for determination in its consideration of the appeal herein?"

2. Did the judgment of the Lagos State High court in this case Exhibit 5 reject the plaintiffs' traditional history and did it create estoppel per rem judicatam against the Plaintiffs herein as claimed by the lower court?"

3. Did the lower court properly assess the impact of Exhibit 1 in its determination of the appeal and was it right in holding that the trial court relied on the said exhibit solely in finding for the Plaintiffs?"

4. Is there any customary law established by evidence which makes the authority to confer chieftaincy title follow from and depend on ownership of land?"

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

LAND LAW - Plaintiff is to establish a better title

1. Now as I said, the plaintiffs put their title in issue.

Even in paragraph 7 of the Statement of Claim, they pleaded that the Defendants are claiming ownership of the land. It is clear to me that the Plaintiffs had done nothing to establish a better title to this land. Their evidence of title or ownership does not go beyond the simple statement that their grandfathers settled on the land five hundred years ago. But there is nothing to show for this except their ipso dixit. (p. 1265 F)

ESTOPPEL - Res judicata - Applicability

2. In my humble view, the plea of res judicata in this case is sustain-

able to preclude the Plaintiffs from re-litigating their alleged title to the two villages. For the detailed reasons contained in the judgment in Exhibit 5, the Plaintiffs' evidence of traditional history as to how they acquired the two villages was rejected. The same judgment also operates to create estoppel per rem judicatam against the Plaintiffs/Appellants. (p. 1266 B)

LAND LAW - Customary rights - Conferment of chieftaincy

3. I hold also that the Appellants' authority to create chieftaincies and confer same on deserving person is of necessity tied to their ownership or over lordship of the two villages and having been adjudged not to be the landlords of the two villages, they cannot be granted the reliefs claimed. The result is that each of the 1st, 2nd and 4th issues is resolved against the Appellants. (p. 1266C)

NOTABLE POINT OF INTEREST

RHODES-VIVOUR JSC

1. Estoppel per rem judicatam - Meaning and scope

Once it is a final decision on the same question and between the same parties it is binding until upset on appeal. Res judicata gives effect to the policy of the Law that parties to a judicial decision should not afterwards be allowed to re-litigate the same question even if the decision is wrong. This is premised on the fact that a court has jurisdiction to decide wrongly as well as correctly, and if it makes a mistake its decision is binding unless corrected on appeal.

Reasons for the doctrine of res judicata estoppel are the interest of the public in the termination of disputes, the conclusiveness of judicial decision and the fact that the individual ought to be protected from vexations multiplicity of suits.

Where a party sets up res judicata by way of estoppel as a bar to the other party's claim the following must be established.

- (a) there must be a judicial decision;
- (b) the court that rendered the decision must have had jurisdiction over the parties and the subject matter;
- (c) the decision must be final and on the merits;
- (d) the decision must determine the same question as that raised in the later litigation; and
- (e) the parties to the later litigation were either parties to the

earlier litigation or their privies, or the earlier decision was in rem.
(p. 1268 G)

REPRESENTATION

- Fred Onuobia with Joy Ogbonna (Mrs.) for the Appellants
B Lawal Pedro (SAN) with Alli Owe (Senior State Counsel) and Justin Jacobs M. A. Apampa for the Respondents

CASES REFERRED TO

- C Faleye v. Otapo (1995) 3 NWLR pt. 381 p. 1
Ezeanya v. Okeke (1995) 4 NWLR pt.288 p. 142
Balogun v. Adejobi (1995) 2 NWLR pt. 370 p. 131
LADEGA Vs DORORMI (1978) 3 sc 91 AT 101-102
NTUKS & ORS Vs N.P.A. (2007) 5 - 6 SCNJ 70 at 83
D AMAKO Vs OBIEFUNA (1974) ALL MR 119 at 128
ATOLAGBE Vs SHOMU (1985) 1 NWLR (part 2)360 at 373
ADONE Vs IKEBUDU (2001) 14 NWLR (part 133) 385 at 408
UDENGWU Vs UZUEGBU (2003) 12 NWLR (part 836) 136 at 152
OGBUMININ & ORS Vs OKUDO & ORS (1979) ALL NLR 105 at 112
E OKOKUJE Vs AKWIDO (2001) FWL (part 39) 1437 at 1503-1505
OLADOYE Vs ADMIN. OSUN STATE (1996) 10 NWLR (p.t 476) 38
W. LADEGA & ORS Vs SHITTU DUROSIMI & ORS (1978) 3SC 91

LEAD JUDGMENT BY TABAI JSC

- F This action was commenced at the Ikeja Judicial Division of the High Court of Lagos State by a writ of summons dated the 14th of July, 1978 by the Plaintiffs who were Respondents at the Court below and are the Appellants in this Court. Pleadings were filed and
G exchanged. Both the Statement of Claim and the Statement of Defence were amended. In the concluding paragraphs of the Amended Statement of Claim dated the 7th of March, 1988 and filed on the 10th of March, 1988, the Plaintiffs/Appellants claimed against the Defendants who are Respondents herein, the following reliefs:-
H 1. A Declaration that the Elete Chieftaincy Family are the only people entitled to create and/or confer Chieftaincy titles for all or any of the villages within the Elete Division.
2. A Declaration that the purported approval of the 3rd Defendant's recommendations of the 4th, 5th and 6th Defendants as

the Baale of Ilemba Hausa, Balogun of Elemba Hausa and the Baale of Ilemba Awori respectively, by the Chieftaincy Committee of the Badagry Local Government at its meeting of 5th May, 1987 is irregular, unconstitutional, incompetent, null and void and of no effect whatsoever.

3. Perpetual injunction restraining the 1st and 2nd Defendants by themselves, their servants, agents or privies or howsoever otherwise from acting upon the 3rd Defendant's recommendation in installing or recognising or taking any steps in recognising or installing or causing to be installed or recognised the 4th, 5th and 6th Defendants as the Baale of Ilemba Hausa, Balogun of Ilemba Hausa and Baale of Ilemba Awori respectively.

4. An order restraining the 4th, 5th and 6th Defendants or any other candidates recommended by the 3rd Defendant by themselves, their servants, agents or privies howsoever otherwise from holding themselves out as the Baale of Ilemba Hausa, Balogun of Ilemba Hausa and Baale of Ilemba Awori or any other Chieftaincy office of the Elele Division or wearing any regalia of Baale of Ilemba Hausa, Balogun of Ilemba Hausa and Baale of Elemba Awori or any Chieftaincy office of the Elele Division or peritting themselves or taking any steps to be installed or recognised as the Baale of Ilemba Hausa, Balogun of Ilemba Hausa and Baale of Ilemba Awori or any other chieftaincy office of the Elele Division or performing or causing to be performed any act or function or ceremony connected with their installation as the Baale of Ilemba Hausa, Balogun of Ilemba Hausa and Baale of Ilemba Awori or any other chieftaincy office of the Elele Division following from the 3rd Defendant's recommendation.

The matter then proceeded to trial which involved the testimony of 9 witnesses for the Plaintiffs and 4 witnesses for the Defence. There were quite a number of exhibits including, Exhibits "5" and "9" which were previous court judgments of the High Court and Court of Appeal respectively.

In his judgment on the 12th January, 1990, the learned trial judge M. O. Onalaja J. (as he then was) granted the 1st and 2nd reliefs for declaration. And while he refused the 3rd relief for injunction, he granted the 4th injunctive relief.

Dissatisfied with the aforesaid judgment, the Defendants proceeded an appeal to the Court below. In its judgment on the 8th of

July, 1999, the appeal was allowed. The judgment of the trial court was set aside. And in its place was substituted a judgment dismissing the Plaintiffs' claim.

The Plaintiffs were aggrieved and have come on appeal to this Court. The parties have, through their counsel, filed and exchanged their
B briefs of argument. The Appellants' Brief was prepared by Fred Onuobia. It is dated the 6th of August, 2007 and was filed on the 8th of August, 2007. Fred Onuobia also prepared Appellants' Reply Brief. It is dated the 10th of March, 2009 and was filed on the 12th of March, 2009.

C Lawal Pedro (SAN) Solicitor-General, Lagos State Ministry of Justice prepared the brief of the 1st and 2nd Defendants/Respondents which was filed on the 12th of May, 2009. The brief of the 3rd to 6th Defendants/Respondents was prepared by M. A. Apampa. The said brief was filed on the 26th of January, 2009. At the hearing of the appeal on
D the 1st of March, 2011, learned counsel for the parties adopted their arguments in their respective briefs of argument.

In the Appellants' Brief, the following issues for determination were submitted:

E *"1. Whether the lower court correctly identified/formulated the issues for determination in its consideration of the appeal herein?"*

2. Did the judgment of the Lagos State High court in this case Exhibit "5" reject the plaintiffs, traditional history and did it create estoppel per rem judicatam against the Plaintiff herein as claimed by the lower court?"

F *3. Did the lower court properly assess the impact of Exhibit "1" in its determination of the appeal and was it right in holding that the trial court relied on the said exhibit solely in finding for the Plaintiffs?"*

G *4. Is there any customary law established by evidence which makes the authority to confer chieftaincy title follow from and depend on ownership of land?"*

In the 1st and 2nd Respondents' brief of argument, Lawal Pedro (SAN) adopted the four issues formulated by the Appellants.

H In the 3rd to 6th Respondents' Brief, however, Mr. M. A. Apampa formulated the following two issues for determination.

1. Did the Plaintiffs prove their entitlement to the reliefs claimed by them at the trial court on a preponderance of evidence?

2. Was the lower court (the Court of Appeal) justified in inter-

fering with the judgment of the trial court by setting same aside?

The 3rd to 6th Respondents also raised a preliminary objection which is argued at pages 3 to 5 of their Brief of argument.

The substance of the arguments of learned counsel for the Appellant is as follows:-

On the Appellants' first issue of whether the Court of Appeal correctly identified the issues for determination in its consideration of the appeal, learned counsel submitted that the court was bound to identify and resolve only the issues presented by the parties and not to substitute its own case for that of the parties. In support of this submission, he referred to UDENGWU Vs UZUEGBU (2003) 12 NWLR (part 836) 136 at 152 and ATOLAGBE Vs SHOMU (1985) 1 NWLR (part 2) 360 at 373. Learned counsel referred to paragraphs 6, 7-12, 13, 14, 15, 16 and 18-24 of the Amended Statement of Claim and paragraph 6, 7 and 9 of the 3rd to 6th Defendants' Statement of Defence and contended that the issue joined was whether it is Elete Chieftaincy Family or the Oniba of Iba who is the prescribed authority to award chieftaincy titles in Ilemba Awori and Ilemba Hausa as was identified by the learned trial judge at page 67 of the record.

According to learned counsel, the Court of Appeal also alluded to this as the main issue when at page 204 of the record it stated:

"What was in dispute in this case was a chieftaincy matter and not a land matter."

Learned counsel also referred to pages 200 and 202 of the record wherein the court below alluded to the issue being that of the chieftaincy dispute as opposed to a land dispute.

With respect to the 2nd issue of whether Exhibit "5", the previous judgment of the Lagos State High Court rejected the traditional history of the Plaintiffs/Appellants and creates estoppel per rem judicatum against them, learned counsel for the Appellants referred to part of the judgment and submitted that although the court held that the Plaintiffs/Appellants had not done enough to sustain their claim for trespass which was therefore dismissed, the decision did not make a declaration in favour of the Defendants/Respondents. It was the further submission of learned counsel that the claim for trespass and injunction was rejected because the area was not properly delineated. On the question of whether the traditional history of the Plaintiffs in Exhibit "5" was rejected, it was the submission of learned counsel

that the question of traditional history was abandoned and it was therefore not determined with certainty. With respect to whether Exhibit “5” creates estoppel per rem judicatam against the Plaintiffs/Appellants, learned counsel reiterated the principle that for the doctrine of res judicata to apply, the parties in the previous case and the current case must be same. It was his contention that the doctrine does not apply in this case because in the previous case, Exhibit “5” the Defendants were sued in their personal capacities. To buttress his argument, learned counsel referred to a portion of Exhibit “5” where the learned trial judge pointed out:

“The Defendants, four in number, were apparently sued in their personal capacities, although, some of them happened to be Baales of particular villages”

‘and submitted that the parties are not the same for the purpose of the rule of estoppel. In support of his argument, reliance was placed on OKOKUJE Vs AKWIDO (2001) FWL (part 39) 1437 at 1503-1505. It was his further submission that since the Defendants in Exhibit “5” did not counter-claim no declaration was made in their favour and therefore that the Plaintiffs/Appellants are not estopped from denying the title of the Defendants/Respondents to the land in question. In support of this submission, learned counsel relied on ADONE Vs IKEBUDU (2001) 14 NWLR (part 133) 385 at 408.

In respect of Appellants’ issue three of whether the Court below properly assessed the impact of Exhibit “1” in its determination of the appeal, learned counsel for the Appellants referred to part of the judgment of the learned trial judge starting from page 71 of the record and contended that the court below was in error in its conclusion that the learned trial judge relied solely on Exhibit “1”. It was further submitted that even if ‘Exhibit “1” does not fall within the classification of ancient document, it was a relevant document from proper custody and therefore admissible under Section 115 and 122 of the Evidence Act. On admissibility on ground of relevance counsel referred to TORTI Vs UKPABI (1984) ALL NLR 185 at 195, OGBUMININ & ORS Vs OKUDO & ORS (1979) ALL NLR 105 at 112. It was his submission that irrespective of Exhibit “1” the learned trial judge would have come to the same conclusion and therefore that there was no case made for the court below to disturb the findings of the learned trial judge.

For the 4th issue learned counsel referred to the opinion expressed by the court below at pages 210 and 211 of the record and submitted that there is no judicial precedent that the right to create a chieftaincy was predicated upon the ownership of land. Nor was there any evidence of the existence of such a custom, counsel further argued. He referred to the evidence of previous conferment of chieftaincy titles in Exhibits 7, 7A, 78 and 7C and pointed out that there was no chaos nor civil strife. Learned counsel referred to the evidence of the DW4 under cross-examination and pointed out that he did not know the previous Baales and unable to adduce evidence to support his claim of being entitled to confer chieftaincy titles.

Learned counsel urged that ownership of land should not be confused with authority to appoint chiefs, contending that one needs not own land to be a chieftaincy appointing authority.

Learned counsel urged finally that the judgment of the court of appeal be set aside and that of the trial court restored and affirmed.

The substance of the arguments of Lawal Pedro (SAN) in the 1st and 2nd Respondents' Brief is as follow:

On the first issue, he pointed out that for the purpose of establishing their right to appoint Chief for the two villages of Ilemba Awori and Ilemba Hausa, the Appellants adduced evidence of their title or ownership of the land. He submitted therefore that the court below did not misconceive the case of the Appellants.

On the 2nd issue, learned senior counsel for the 1st and 2nd Respondents reiterated the principle of issue estoppel restated in FADIORA Vs BADEBO & ORS (1978) 3 sc 219. He then referred to the previous judgment between the Appellants and the 3rd to 6th Respondent wherein the Appellants' claim to their entitlement or ownership of the land in the two villages was dismissed. Learned senior counsel referred to Halsbury's Laws of England (4th Edition) Vol. 16 paragraph 977, LADEGA Vs DORORMI (1978) 3 sc 91 AT 101-102, THODAY Vs. THODAY (1964) 1 ALL E.R. 341 on the application of the principle of issue estoppel and submitted that the Appellants who had the opportunity but failed to establish their title to the land in the villages in the first action are by the principle or defence of issue estoppel precluded from asserting title to the same land in any subsequent action. It was his submission therefore that the court below was right to hold that issue estoppel applied to pre-

clude the Appellants from raising the issue of title over the land in the two villages as a basis for their claim to the chieftaincy titles in question. He relied further on NTUKS & ORS Vs N.P.A. (2007) 5 - 6 SCNJ 70 at 83.

With respect to the third issue of the import of Exhibit “1” learned senior counsel conceded that as a general principle admissibility is based on relevance. He argued however that where there is a pre-condition for the admission of a document, unless the pre-condition is fulfilled the document will be inadmissible. Since Exhibit “1” is said to have emanated from the National Archives, learned senior counsel argued, its certification must comply with the provisions of Section 7 of the Public Archives Act Cap 163 Laws of the Federation of Nigeria 1958 which was in force at the material time. It was submitted that under Section 7 of the Public Archives Act, a document emanating from the National Archives can only be admissible in evidence if it is (a) certified by the Director of Federal Archives or by an officer of the department duly authorized and (b) carries an official seal of the Director of Federal Archives. He argued that Exhibit “1” does not comply with the said pre-conditions. In addition, it was an official of the Lagos State Ministry of Local Government and Chieftaincy Affairs who had custody of the document that was called to tender it instead of an official of the Federal Public Archives, learned senior counsel argued. It was his submission therefore that Exhibit “1” was inadmissible and urged that the decision of the court below on this issue be affirmed.

As regards to the 4th issue, it was the submission of learned senior counsel that the onus was on the Appellants to prove that they have a right to create and appoint chiefs for the two villages without such rights being tied to the ownership or over lordship of the land in the two villages. He urged that the appeal be dismissed.

As I stated earlier, the 3rd to 6th Respondents raised a Notice of preliminary objection to issues No. 2 and 4. The argument of M. A. Apampa for the 3rd - 6th Respondents are substantially to the same effect as those for the 1st and 2nd Respondents.

The pith of the arguments of Mr. Fred Onuobia in the Appellants’ Reply brief runs as follows. It was his contention that the survey plan Exhibit “2” was tendered to show the area of the Elete Unit over which they had suzerainty and the right to create and confer chieftaincy titles; that it was never tendered to prove title to land. On the admissibility of

Exhibit “3”, it was the submission of learned counsel that, it was written in the Yoruba language and was not translated into the English language, it was nevertheless admissible on the ground that of relevance. With respect to the admissibility of Exhibit “1” it was the contention of learned counsel that it did not emanate from the National Archives. The PW6 who was an officer of the Lagos State Ministry of Local Government and Chieftaincy Affairs had proper custody of it and tendered it which he was subpoenaed to do so. Moreover, counsel argued, Exhibit “1” dated 23/11/1939 was, at the time it was tendered in 1987, 48 years old and was therefore admissible under Section 123 of the Evidence Act. It was the further submission of learned counsel that even without Exhibit “1” the learned trial judge would still have reached the same conclusion that the 3rd Defendant/Respondent lacked control over Ilemba Awori and Ilemba Hausa.

Finally, it was the submission of learned counsel that the Appellants’ issue 4 is not merely an academic question. Learned counsel referred to the evidence of previous conferment of chieftaincy titles in Exhibits 7, 7A, 7B and 7C and the testimony of the DW4 under cross-examination admitting the said previous conferment and submitted that the issue is not merely academic. On what constitutes an academic question, learned counsel referred to *OLADOYE Vs ADMINISTRATOR OSUN STATE* (1996) 10 NWLR (part 476) 38 at 60. It was learned counsel’s further submission that since the 3rd to 6th Respondents failed to respond to the Appellants’ 4th issue, it should be resolved in favour of the Appellants. In conclusion, learned counsel urged that the appeal be allowed with the judgment of the court below set aside and that of the trial court restored.

Let me now consider the issues as formulated by the Appellants and adopted by the 1st and 2nd Respondents. In the course of my deliberations, I shall examine the 1st, 2nd and 4th issues together. The first issue questions whether the Court of Appeal correctly identified the issues in its consideration of the appeal. The 2nd issue questions whether Exhibit “5” rejected the Plaintiffs traditional evidence and whether it operates as estoppel per rem judicatam against the Appellants. And the fourth issue questions whether there was established, by evidence any customary law by which the creation and appointment of chieftaincy titles in the affected communities is predicated on the title or ownership of land of the communities. I have

earlier reproduced the relief's claimed in this action. In reliefs 1 and 2, the Appellants seek a declaration that their Elete Family is the only family entitled to create and confer chieftaincy titles on any person in the villages within the Elete Division and that the 3rd Defendant, not being a member of their Elete Family has no authority to recommend the 4th, 5th and 6th Defendants for appointment and installation as chiefs in Ilemba Hausa and Ilemba Awori. Reliefs 3 and 4 are injunctive reliefs to prevent or restrain the planned appointments of the 4th, 5th and 6th Defendants/Respondents as chiefs.

What is the Plaintiffs'/Appellants' alleged source of their authority over the creation and appointment of chiefs in Ilemba Hausa and Ilemba Awori? This can be gleaned from paragraphs 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Amended Statement of Claim. The substance of their case as pleaded is that the Plaintiffs/Appellants are members of the Elete family a unit in the Badagry Division of Lagos State. That the said Elete unit comprises several villages namely: Ishagira, Ilemba Awori, Egan, Ese-Ofin, Origele, Ilemba Hausa, Onigbongbo, Ojota, Oriwa and Igamo; That they are the descendants of the original settler of the villages Elete who hailed from Ile-Ife; That during Elete's migration from Ile-Ife he first stopped at Ishere Olofin and kept on moving from place to place until he came to Virgin land where he settled in the villages comprised in the Elete unit. He eventually made Ilemba Awori his base while exercising his dominion over all the villages in the unit. Later on by the permission of the Elete family one Hausa stranger name Sofa was allowed to live in the present location of Ilemba Hausa within the Elete unit.

Clearly, the above traditional history pleaded forms the basis of the Appellants' claim. The case simply is that by reason of their being the descendants of the founder of the villages including the disputed Ilemba Awori and Ilemba Hausa, they are the owners of the land comprised therein and afortiori the overlords of the persons living therein. That by reason thereof it is their exclusive entitlement to create chieftaincy titles and confer same on deserving persons.

In reaction to the above, the 3rd-6th Defendants/Respondent pleaded in paragraphs 3, 4, 6 and 8 as follows:

"3. The Defendants aver that the 3rd - 6th Defendants are residents of Ilemba Awori and Elemba Hausa Villages respectively and acknowledge the Oniba of Iba as their paramount ruler or Oba.

4. The Defendants aver that from time immemorial the titles of

Baale of Ilemba Hausa, Balogun of Ilemba Hausa and Baale of Elembo Awori have existed in the above named villages and deserving citizens therein have always been honoured and conferred with such titles by the Oniba of Iba.

6. *The Plaintiffs are stopped from pleading paragraphs 7, 8, 9, 10, 11, 12, 16, 18, 20 and 24 of the Statement of Claim by virtue of the judgment in suit No.LD/1219/1974 delivered on 1st September, 1978 and affirmed by the Court of Appeal in FCA/L/108/79 of 19th of March, 1981 and the Supreme Court in suit No.SC.24/1983 at 27th February, 1979*

8. *The Defendants aver that quite apart from exercising dominion over those villages mentioned in paragraph 13 of the Statement of Claim, the Oniba is also the paramount ruler of Ilemba Hausa, Ilemba Awori, Okokomaiko, Kemberi and numerous other villages and towns.*

In reaction to the fact pleaded in the Amended Statement of Defence, the Plaintiffs/Appellants filed a Reply. In paragraph 3 thereof the Appellant pleaded :-

“3. The Plaintiffs aver that, the 4th, 5th and 6th Defendants are customary tenants of the Elele Family and the procedure for the appointment of traditional Chiefs of Ilemba Hausa and Ilemba Awori is under the authority of the Elele Chieftaincy family.”

The foregoing were the cases of the parties at the trial. I have already stated the findings and conclusion of the learned trial judges. In the said judgment, he reproduced some material averments in the pleading of the parties and analysed the evidence in consideration details. He reproduced paragraph 1, 6, 7, 12, 20, 23 and 24 of the Amended Statement of Claim. He also reproduced paragraph 3, 4 5, 8, 11 and 12 of the Amended Statement of Defence. Later in the course of his judgment, the learned trial judge also reproduced in paragraph 6 of the Statement of Defence as the principle of Res Judicata which in my view is the crucial issue in this appeal. He examined this principle and relying on a number of case law authorities ruled as follows:

“Applying the above to the facts of this case, the issue in Exhibit “5” and which went on appeal in Exhibit “9” was trespass. The present action is Chieftaincy matter. I therefore hold that the issues and/or object matter use not the same. I rule therefore that the plea of res judicata by the 3rd - 6th Defendants is unsustainable as all the

essential principles do not exist in the present action. The plea fails and it is rejected”

The Court below disagreed with the foregoing findings of the trial court on the effect of Exhibit “5” and “9”. In part of the judgment at page 86 of the record, the court said:

B *“The lower court correctly stated the principles guiding the applicability of the plea of Res Judicata. But I think, with respect, it should have gone further to consider whether or not the findings of fact made in the earlier case dealing with trespass and title did not create an estoppel against the plaintiffs in the current case dealing with the chieftaincy matter.”*

C On this principle of issue estoppel, the court below per Oguntade JCA (as he then was) quoted extensively from the decision of this Court in WILLIAM LADEGA & ORS Vs SHITTU DUROSIMI & ORS (1978) D 3 SC 91 at 101-102 and SAMUEL FADIORA & ANOR VS FESTUS GBADEBO & ANOR (1978) 3 SC 219 at 228 -229 and stated thus:

E *“In the instant case, the lower court felt unable to apply estoppel per rem judicata because the subject matter in both cases was not the same. In my humble view, a court before whom a plea of res-judicata or issue estoppel is raised has a duty to carefully investigate the matter in order to decide whether the plea applied. A superficial or perfunctory investigation may lead to grave injustice involved. In an attempt to establish title, the plaintiffs relied on traditional history the substance of which is that their ancestors first settled on the land at Ilemba Hausa and Ilemba Awori. The Defendants similarly pleaded that their ancestors had settled on the land from time immemorial. Dosumu J. dismissed the Plaintiffs’ case and made finding against them. The judgment of Dosumu J. in Exhibit “5” was a clear rejection of the traditional history of the plaintiffs.”*

G In further deliberation on the issue, the lower court continued:-

H *“The error of the lower court becomes glaringly manifest when it is considered. That as a result of the judgment of the lower court, we now have in the two villages a modern day colonialism where persons who have been adjudged not to be the owners of the villages now have the privilege to create chieftaincies and appoint Chief over another’s land. The position is clearly intolerable and can lead to chaos and civil strife.”*

I wish to state without any equivocation that I agree with the

above reasoning of the lower court. The Plaintiffs'/Appellants' claim of their entitlement to create chieftaincies and confer chieftaincy titles on deserving persons is predicated on their claim to be the descendants of the founder of the villages. Although, the claim is for a declaration that the Elete family are the only persons entitled to create and/or confer chieftaincy titles on deserving persons, the alleged source of their authority is their title to and dominion over the lands of the disputed Ilemba Awori and Ilemba Hausa. The entire claim is predicated on their claim to be the landlords of Ilemba Awori and Ilemba Hausa. The pertinent question is whether the Plaintiff/Appellant should be allowed to re-litigate on this issue of their being the landlords of Ilemba Awori and Ilemba Hausa in view of the decision in Exhibit "5" and "9". Exhibit "5" is the judgment of the Lagos State High Court on the 1st day of September, 1978. In part of the judgment, the trial judge L. J. Dosunmu J. made some crucial findings. At page 81 of that record he declared:

"It is interesting to note that whereas the Plaintiffs were unable to produce as witnesses people who acknowledge them as landlord in respect of any part of these villages, the Defendants at any rate the 4th Defendant produced such persons as Hassan Abu, Isaac Aina who testified that they were tenants of Oniba Family at Ilemba Housa and Ilemba Awori and for many years. This shows that the Defendants are in possession of the land in dispute, at any rate, more than the plaintiffs can claim to be. Counsel for the Defendants submitted that the plaintiffs have put their title in issue although the claims are for trespass and injunction. I think they are right in the light of the pleadings."

In still further deliberation on the issue, the trial judge continued thus:-

Now as I said, the plaintiffs put their title in issue (see AMAKO Vs OBIEFUNA (1974) ALL MR 119 at 128.) ***Even in paragraph 7 of the Statement of Claim, they pleaded that the Defendants are claiming ownership of the land. It is clear to me that the Plaintiffs had done nothing to establish a better title to this land. Their evidence of title or ownership does not go beyond the simple statement that their grandfathers settled on the land five hundred years ago. But there is nothing to show for this except their ipso dixit.*** Even a defence witness, Mr. Bashiru Ishola who claims to be a member of Elete family testified that the two villages do not belong to his family. Although I have some reserva-

tions about his evidence, being rival to some of the plaintiffs in certain chieftaincy disputes, yet there is no solid evidence of ownership at the family to these villages.

The above demonstrates in very clear term, that in Exhibit “5”, the Plaintiffs claim of title to or their claim of being the landlords of the same B Ilemba Awori and Ilemba Hausa was dismissed. ***In my humble view, the plea of res judicata in this case is sustainable to preclude the Plaintiffs from re-litigating their alleged title to the two villages. For the detailed reasons contained in the judgment in Exhibit “5”, C the Plaintiffs’ evidence of traditional history as to how they acquired the two villages was rejected. The same judgment also operates to create estoppel per rem judicatam against the Plaintiffs/Appellants. I hold also that the Appellants’ authority to create chieftaincies and confer same on deserving D person is of necessity tied to their ownership or over lordship of the two villages and having been adjudged not to be the landlords of the two villages, they cannot be granted the reliefs claimed. The result is that each of the 1st, 2nd and 4th issues is resolved against the Appellants.*** It is also my view that E the resolution of these three issues against the Appellants disposes of the appeal. Consideration of the import or purport of Exhibit “1” becomes merely an academic question.

In conclusion, I endorse the decision of the court below. The F consequence is that this appeal fails and is accordingly dismissed. I assess the costs of this appeal at N50,000.00 in favour of the 3rd - 6th Respondents.

G **MUKHTAR JSC**

I have had the opportunity of reading in advance the lead judgment delivered by my learned brother Tabai JSC. I agree with the reasoning and the conclusion reached, that the appeal lacks merit and substance and should be dismissed. I also dismiss the appeal, H and abide by the consequential orders made in the lead judgment.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother TABAI, JSC just delivered.

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

I order accordingly and abide by the consequential orders made in the said lead judgment including order as to costs.

Appeal dismissed.

MUHAMMAD JSC

I read before now the judgment just delivered by my learned brother, Tabai, JSC. I agree with his reasoning and conclusions. I overrule the preliminary objection. I find no merit in the appeal and it is hereby dismissed. I abide by all the consequential orders made in the judgment of my learned brother Tabai, JSC.

RHODES-VIVOUR JSC

I have had the privilege of reading in draft the leading judgment of my learned brother Tabai, JSC. I am in full agreement with the judgment. I propose to add a few observations.

Res Judicata is the central issue in this appeal the trial court rejected the plea while the Court of Appeal accepted it. In the main, the appellants as plaintiffs came to court for a declaration that their Elete family is the only family entitled to create and confer chieftaincy titles on any person in the village within the Elete Division and that the 3rd respondent not being a member of their Elete family has no authority to recommend the 4th, 5th and 6th respondents for appointment and installation as chiefs in Ilemba Hausa and Ilemba Awori.

Exhibit 5 is the judgment of Dosumu J (as he then was) delivered on 1/9/78. Exhibit 9 in the appeal from Exhibit 5. In this case the learned trial judge in rejecting the plea of res judicata said:

“Applying the above to the facts of this case, the issue in Exhibit “5” and which went on appeal in Exhibit “9” was trespass. The present action is chieftaincy matter. I therefore hold that the issues and/or subject matter are not the same. I rule therefore that the plea of res

judicata by the 3rd - 6th Defendants is unsustainable as all the essential principles do not exist in the present action. The plea fails and it is rejected."

The Court of Appeal found the learned trial judge wrong, and said:

"In the instant case, the lower court felt unable to apply estoppel per rem judicata because the subject matter in both cases was not the same.....In an attempt to establish title, the plaintiffs relied on traditional history the substance of which is that their ancestors first settled on the land at Ilemba Hausa and Ilemba Awori. The Defendants similarly pleaded that their ancestors had settled on the land from time immemorial.

Dosumu, J dismissed the plaintiffs' case and made findings against them. The judgment of Dosumu J. in Exhibit 5 was a clear rejection of the traditional history of the plaintiffs."

The Court of Appeal then observed that:

"The error of the lower court becomes glaringly manifest when it is considered. That as a result of the judgment of the lower court, we now have in the two villages a modern day colonialism where persons who have been adjudged not to be the owners of the villages now have the privilege to create chieftaincies and appoint chiefs over another's land. The position is clearly intolerable and can lead to chaos and civil strife."

The above shows that the appellants were re-litigating the issue of their being the landlords of Ilemba Awori and Ilemba Hausa, an issue settled in the judgment of Dosumu J - Exhibit 5.

In several decisions of this court, the doctrine of Res Judicata, estoppel was explained. See

Ezeanya v. Okeke 1 995 4 NWLR pt.288 p. 142

Faleye v. Otapo 1995 3 NWLR pt. 381 p. 1

Balogun v. Adejobi 1995 2 NWLR pt. 370 p. 131

Where a judgment, i.e. a final judicial decision has been pronounced on the merits by a court with the requisite jurisdiction over the parties and the subject matter, any party in such suit as against any other party is estopped in a subsequent suit from disputing such decision on the merits.

Once it is a final decision on the same question and between the same parties it is binding until upset on appeal. Res judicata gives effect to the policy of the Law that parties to a judicial decision should not afterwards be allowed to re-litigate the same question even if the decision is wrong. This is premised on the fact that a court has juris-

diction to decide wrongly as well as correctly, and if it makes a mistake its decision is binding unless corrected on appeal.

Reasons for the doctrine of *res judicata estoppel* are the interest of the public in the termination of disputes, the conclusiveness of judicial decision and the fact that the individual ought to be protected from vexatious multiplicity of suits. B

Where a party sets up *res judicata* by way of estoppel as a bar to the other party's claim the following must be established.

- (a) there must be a judicial decision;
- (b) the court that rendered the decision must have had jurisdiction C over the parties and the subject matter;
- (c) the decision must be final and on the merits;
- (d) the decision must determine the same question as that raised in the later litigation; and
- (e) the parties to the later litigation were either parties to the earlier D litigation or their privies, or the earlier decision was in rem.

My lords, the judgment of Dosumu, J delivered on 1/9/78 Exhibit 5 rejected the appellants' traditional history. The findings made in that judgment dealing with trespass and title created an estoppel against the appellants in this case dealing with the chieftaincy matter on the simple E reasoning that the appellants who are not the owners of the villages cannot create chieftaincies in the land of someone else.

For this, and the fuller reasons in the leading judgment delivered by Tabai, JSC this appeal is dismissed with costs of N50,000 to the 3rd F to 6th Respondents.

G

H