

SUPREME COURT OF NIGERIA

24TH JUNE, 2011. SC. 169/2004

**CORAM:- D. MUSDAPHER, C. M. CHUKWUMA-ENEH, O.
O. ADEKEYE, S. GALADIMA, B. RHODES-VIVOUR, JJSC**

1. RESSEL L. Y. DAKOLO

2. MRS. LYDIA A. NWANJEI APPELLANTS

3. MRS. CHRISTINA A. MARSHAL

AND

1. GREGORY REWANE-DAKOLO

2. KENARA REWANE-DAKOLO

3. MADAM EDNA EDOMI RESPONDENTS
YON-DAKOLO

4. PROBATE REGISTRAR HIGH

COURT OF JUSTICE, DELTA STATE

ESTOPPEL - Res judicata - Applicability - Where judgment in a suit is decided on same subject matter and between same parties - The suit cannot be re-litigated by any of the parties (H1)

ESTOPPEL - Res judicata - Rationale - It is necessary to ensure conclusiveness of judgments - And to prevent multiplicity of suits (H2)

LAND LAW - Title - Proof - Plaintiff succeeds on strength of his case - Not on weakness of defence - And court is to decide on preponderance of evidence (H3)

APPEALS - Findings of facts - Interference - Supreme Court does not interfere - Save where there is perversity - Which is not the case here (H4)

APPEALS - Grounds of appeal - Issues - Formulation - Where no issue is formulated in respect of a ground of appeal - Such ground is deemed abandoned (H5)

FACTS

1st - 3rd respondents were plaintiffs in a consolidated suit registered as W/135/94 and W/163/94 at High Court of Delta State,

Warri Judicial Division, while 1st - 3rd appellants and 4th respondent were defendants. Respondents claimed in their amended writ of summons in Suit No. W/135/94; a declaration that No. 1 Roberts Road, Warri and No. 45 Warri/Sapele Road Warri are the bona fide property of their grandmother Madam Edomi Ogbe, and that they are entitled to be granted Letters of Administration by Probate Registrar of the High Court, 4th defendant/respondent. 4th defendant/respondent is to be directed to issue the letters to respondents while appellants and their privies and heirs are to be restrained from acting upon the Letters of Administration already issued to them. 1st - 3rd respondents gave traditional evidence that the property originally belonged to Chief Yonwuren who made a gift of same inter vivos under Customary Law to his daughter Madam Edomi Ogbe, their grandmother. While appellants contend that the property in dispute formed part of an area of land known as "Ogbe-Ijaw" at that time owned and occupied by the Ijaws.

That the government subsequently acquired the area and it came to be known as crown land. That the governments phased out the land and granted leases of the portions including the disputed land to interested persons including their father Solomon Benson Henry Dakolo in 1930 vide the lease admitted at the trial as exhibit "D". They also relied on exhibit K and L (previous judgments) as estoppel in this matter. At the end of hearing, the court believed the traditional history given by respondents and consequently gave judgment to respondents. Dissatisfied, appellants filed an appeal at Court of Appeal Benin Division. The Court upheld specific findings of facts by the High Court in favour of respondents and affirmed the judgment. Dissatisfied again, appellants further appealed to Supreme Court. 1st - 3rd respondents filed a notice of preliminary objection that grounds 2, 3, 4 and 5 of appellants' grounds of appeal and issues 1, 2, and 3 for determination settled therefrom are incompetent and should be struck out.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal was right in holding that the issue of estoppel was adequately dealt with and could not be considered,

2. Whether the 1st - 3rd respondents rather than the appellants proved their case for title and thus entitled to judgment.

3. Whether or not the court of Appeal made a correct approach to the appellants' case having regard to the state of the Law, the treatment given to the issue for determination, grounds of appeal, the law and the approach adopted.

HELD (Unanimously dismissing the appeal per **RHODES-VIVOUR JSC**)

ESTOPPEL - Res judicata - Applicability

1. The well laid down position of the law is that where a judgment is final, and on the merits, and delivered by a court of competent 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 the decision is final on the same question and between the same parties it is binding until upset on appeal.

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 delivered 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. 1673 D)

ESTOPPEL - Res judicata - Rationale

2. Res judicata estoppel is necessary to ensure the conclusiveness of judicial decisions and that individuals ought to be protected from vexations and multiplicity of Suits. (p. 1673 H)

LAND LAW - Title - Proof

3. Now, History is all about evaluating belief on the basis of credibility. Declaration of title to land is granted at the discretion of the trial judge after hearing both sides, and to succeed a plaintiff must show how the land devolved and eventually came to be owned by him. This is done by the plaintiff narrating a continuous chain of devolu-

tion which is tested by cross-examination. On conclusion of oral testimony the trial judge is to decide which of the two are telling the truth and proceed to grant a declaration of title to the side that he is impressed with.

The plaintiff succeeds on the strength of his case and not on the weakness of the defendants' case. (p. 1676 E)

APPEALS - Findings of facts - Interference

4. Unchallenged evidence shows that when Solomon Benson Henry Dakolo married Madam Edomi (the grandmother of the respondents) he lived with her in her house. He survived her, so it was easy for him to alter Exhibit D, thereby claiming his dead wife's property. Findings of fact by the trial court, which have been confirmed by the Court of Appeal, would not be upset by this court except the findings are perverse or were not supported by credible evidence, or there is/was miscarriage of justice or violation of procedure or neglect of some principle of law.

The following findings of facts made by the learned trial judge were confirmed by the Court of Appeal.

1. The land in dispute was owned by Chief Ogbe Yonwuren. He gave it to his daughter, Madam Edomi Ogbe, (as a gift) the grandmother of the 1st - 3rd respondents.

2. The father of the appellants, Solomon Dakolo in an attempt to convert/claim the land as his own fraudulently altered survey plans Exhibit A and B attached to Exhibit D.

3. Madam Edomi Ogbe (deceased) built structures on the land and had been in possession prior to 1930 when exhibit D was executed.

These findings are not perverse, rather they are the truth, and the Court of Appeal was correct to confirm them. In the circumstances concurrent findings of fact by the courts below are unassailable. (p. 1678 B)

H Grounds of appeal - Issues - Formulation

5. Where no issue is formulated in respect of ground/s of appeal, the ground/s of appeal from which no issue was/were formulated is/are deemed abandoned and ought to be struck out by the Court of Appeal. In this case the Court of Appeal was correct to strike out

grounds 2 - 7, since they were abandoned by the appellants.
(p. 1679 F)

NOTABLE POINTS OF INTEREST

RHODES-VIVOUR JSC

1. Identification of disputed land - Importance of Survey plan

In all cases on land the first task is to identify the land or property in dispute. Where the identity of the land is in dispute it is resolved by each side producing Survey plans supported by credible evidence to satisfy the court of the land or property in issue. But where the land or property is well known to both sides, the need no longer arises. In this case the identity of the property is not in issue. It is clear that No.1 Robert Road and No.45 Warri/Sapele Road is the same property as No.1 Robert Road, called No.45 Warri/Sapele Road.
(p. 1674 H)

2. Proof of ownership of land

There are five ways in which ownership/title to land may be proved. They are:

1. Proof of traditional evidence;
2. Proof of acts of ownership, acts by persons claiming the land such as selling, leasing, renting out all or part of the land, or farming on it or otherwise utilizing the land beneficially. Such acts of ownership extending over a sufficient length of time and numerous and positive enough to warrant the inference that he is the true owner;
3. Proof by production of document of title which must be authenticated;
4. Proof of ownership by acts of long possession and enjoyment in respect of the land to which the acts are done;
5. Proof of possession of connected or adjacent land, circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute, may rank also as means of proving ownership of the land in dispute.

3. Alterations invalidates Lease agreement

A lease agreement loses its authenticity once altered. Where a lease agreement or/and its attachments are altered or tampered with, the

presumption of regularity can no longer be ascribed to it. Such a document is no longer authentic. With the alterations on Exhibit D, the case of the appellants crumbles. On the other hand the consistent testimony of the respondents' witnesses tracing root of title and a short chain of devolution remains unassailable for all times. Concurrent findings of the courts below are correct. (p. 1677 H)

ADEKEYE JSC

4. Court is to do justice rather than considering technicalities
 C Grounds of appeal are to be differentiated from their particulars - while the grounds of appeal must clearly state what the appellant is complaining about, whereas the essence of the particulars of a ground of appeal is to set out briefly the aspect of the substantive law or procedural law that is affected by the error or misdirection identified D or complained of in the ground of appeal. The fact that a ground of appeal is argumentative or repetitive is not sufficient to deny the appellant his right of appeal when on the face of the ground of appeal notable issue arises for consideration by the court. As rightly observed E by the appellants the activists approach to adjudication of matters is to avoid technicality as the principal duty of the court is to do justice. (p. 1683 C)

REPRESENTATION

F S. H. Igbikiberesima, for the Appellants
 A. M. Oriakhi, for the Respondents

CASES REFERRED TO

Piazo v. Tenalo (1976) 12 SC p.31
 G Udo v. Obot (1989) 1 NWLR pt. 95 p.59
 Agbo v. State (2006) 6 NWLR Pt.977 p.545
 Obasi v. Onwuka (1987) 3 NWLR Pt.61 p.369
 Idundun v. Okumagba (1976) 9 - 10 SC p.224
 Anabaronye v. Nwakaihie (1997) 1 SCNJ p.161
 H Ndukwe v. Okocha (1992) 7 NWLR Pt.252 p.131
 Balogun v. Adejobi (1995) 2 NWLR pt.376 pg.131
 Ibrahim v. Mohammed (2003) 6 NWLR Pt.817 p.615
 Shittu v. Fashawe (2005) All FWLR Pt.278 pg.1017
 Osunrinde v. Ajamogun (1972) 7SCNJ (Pt.1) pg.106

Odievivedie v Echanokpe (1987) 1NWLR pt. 52 p.633

Nwokorobia v. Nwogu (2009) ALL FWLR pt. 476 pg.1868

LEAD JUDGMENT BY RHODES-VIVOURE JSC

Suits No.W/135/94 and No.W/163/94 were ordered consolidated by the learned trial Judge. The 1st, 2nd and 3rd respondents, as plaintiffs suing in a representative capacity claimed against the appellants as defendants for:

1. A declaration that No. 1 Robert Road, Warri and No. 45 Warri/Sapele Road, Warri are the bonafide property of Late Madam Edomi Ogbe.

2. A declaration that the plaintiffs being the surviving children of late Madam Edomi Ogbe whose parents administered the properties before the death of the last of them in 1992 are entitled to letters of Administration of the properties.

3. An order against the 4th defendant revoking the Letters of Administration granted by the 4th defendant to the 1st, 2nd 3rd defendants on or about 7th of February, 1994 in respect of the said properties.

4. An order against the 4th defendant to cause to be issued Letter of Administration to the plaintiffs in respect of the properties at No.1 Robert Road, Warri and No. 45 Warri/Sapele Road, Warri.

5. An order of perpetual injunction against the 1st to 3rd defendants, from applying for Letters of Administration in respect of the said properties and against the 4th defendant, its servants, privies or agents from issuing letters of Administration to the 1st to 3rd defendants, their servants, privies or agents, heirs or successors-in-title.

The defendants in the consolidated suits suing as Administrators of the personal and real estate of Solomon Dakolo claimed as follows:

1. A declaration that the property situate at and known as No. 1 Robert Road, Warri otherwise referred to as 9, Warri/Sapele Road and after renumbering of streets referred to as 45 Warri/Sapale Road, Warri is part of the estate of Solomon Dakolo, deceased, who died on 31st December, 1954 and does not form part of any estate called Edomi Ogbe Estate.

2. A declaration that the defendants appointment of Ben Akporiaye as estate agent and the purported vesting in him of the

power to manage the property known as No.1 Robert Road otherwise or sometimes referred to either as 9 or 45, Warri/Sapele Road, Warri without the consent of the plaintiffs is wrongful, null and void.

3. A declaration that having regard to the fact that the property known as No. 1 Robert Road Warri, did not at any time belong to Edomi Ogbe nor does same form part of Edomi Ogbe's Estate upon which the defendants grounded their claim/authority, the defendants' appointment of Dr. G. I. Emiko as the legal representatives in respect of the above named property is wrongful, null, void and deceptive.

4. An order compelling each of the defendants to account for rents or money collected through the instrumentality of Ben Akporiaye or their agent, Warri otherwise referred to as 9 or 45 Warri/Sapele Road and pay same over to the plaintiffs.

5. An order for a perpetual injunction restraining agents, or all servants from demanding and/or collecting rents any tenant/occupants of the premises known as No. 1 Robert Road, Warri otherwise referred to either as 9 or 45 Warri/Sapele Road, Warri and from interfering or meddling in any manner howsoever with the management of the said property without the consent or permission of the plaintiffs.

For clarity, the respondents were plaintiffs in suit No.W/135/94 while the appellants were plaintiffs in Suit No.W163/94. After consolidation; the respondents remained as plaintiffs while the appellants in suit No.W/163/94 became the defendants. The Probate Registrar of the High Court of Justice, Delta State was the 4th defendant. Trial was at the High Court of Delta State. In Warri, Akpiroroh J (as he then was) presided. Six witnesses gave evidence for the defendants. Documents were admitted as exhibits. The Plaintiffs relied on traditional evidence to prove that they own the property while the defendants relied on acts of ownership. The learned trial judge was satisfied with the plaintiffs' evidence and entered judgment in favour of the plaintiffs. The claims of the defendants' were dismissed. Dissatisfied, the defendants' lodged an appeal in the Court of Appeal, Benin Division. That court agreed with the judgment of the learned trial judge and in the concluding paragraph of the judgment said:

"in the result having regards to the aforesaid, I hold the view that this appeal lacks merit and it is hereby dismissed. The judgment

of the learned trial Judge, Akpiroroh, J (as he then was) delivered on 7/8/98 is therefore affirmed by me...,”

This appeal is against that judgment. In accordance with Order 6 Rule 5 of the Supreme Court Rules briefs of argument were filed and exchanged by counsel. Learned counsel for the appellant filed an appellant’s brief and a Reply brief on 27/9/06, and 5/11/09 respectively. Learned counsel for the respondents filed a respondent’s brief on 9/10/09. Incorporated in the respondents brief are arguments on a Preliminary objection. This is now accepted practice, as it obviates the necessity of filing a separate Notice of Preliminary objection. This practice makes it possible for the judge to determine the preliminary objection with the appeal, thereby saving time. In the appellants’ briefs three issues are distilled from five grounds of appeal. They are:

1. Whether the Court of Appeal was right in holding that the issue of estoppel was adequately dealt with and could not be considered.

2. Whether the 1st - 3rd respondents rather than the appellants proved their case for title and thus entitled to judgments.

3. Whether or not the court of Appeal made a correct approach to the appellants’ case having regard to the state of the Law, the treatment given to the issue for determination, grounds of appeal, the law and the approach adopted.

On his part, learned counsel for the 1st - 3rd respondents formulated two issues for determination.

1. Whether the court below was right when it adopted and considered the sole issue for determination formulated by the appellants and struck out the other grounds of Appeal from which no issues were formulated.

2. Whether the court below was right when it affirmed the judgment of the trial court based on the sole issue for determination submitted to it by the appellants.

Preliminary Objection

Learned counsel for the appellants’ filed five grounds of appeal from which three issues were distilled for determination of this appeal.

His objection is that Grounds 2, 3, 4 and 5 and issues 1, 2, and 3 are incompetent and should be struck out.

I have examined in detail the grounds of appeal and the issues, and considered submissions of counsel on the preliminary objection. I find the grounds of appeal to be inelegantly drafted and prolix in the extreme, but anyway one looks at it the substance of the appellants' grievance appears obvious. In effect the appellants are
 B not satisfied with concurrent findings of fact by the courts below. In the circumstances I shall adopt the three issues formulated by the appellants' learned counsel for determination of this appeal. At the hearing of the appeal on the 5th of April 2011 learned counsel for
 C the appellant adopted his briefs and urged the court to allow the appeal. Learned counsel urged the court to uphold the preliminary objection and dismiss the appeal as incompetent. Learned counsel for the appellant urged the court to dismiss the preliminary objection.

D The original owner of No. 1 Robert Road, Warri is Chief Ogbe Yonwuren. One of his children is Madam Edomi Ogbe. After her first marriage to one Mr. Weeks, she married Mr. Solomon Benson Henry Dakolo. The appellants are the children of Solomon Benson Dakolo, while the respondents are children of Ayo Glasone Yon-Dakolo, a
 E son of Madam Edomi Ogbe. The respondents are plaintiffs, by traditional evidence satisfied the learned trial Judge that the original owner gave No. 1 Robert Road, as a gift to his daughter, and they as her grandchildren are entitled to Letters of Administration of the property in the absence of their parents who are dead. The Court of
 F Appeal agreed with the findings of the learned trial Judge and dismissed the appeal.

Issue 1:

G Whether the Court of Appeal was right in holding that the issue of estoppel was adequately dealt with and could not be considered.

Learned counsel for the appellant observed that the respondents are estopped from contesting title to No. 1 Robert Road, Warri with the appellants in view of the judgments in Suits Nos. W/108/94
 H - Exhibit K, SC.209/1972 - Exhibit L. Reliance was placed on Section 151 of the evidence Act. Reliance was placed on *Osunrinde v. Ajamogun* (1972) 7SCNJ (Pt.1) pg.106

Learned counsel for the respondent observed that the issue of estoppel was dealt with by the High court, contending that it cannot

be raised in this court without leave of this court, contending that the appellants' argument on this point is incompetent and liable to be struck out. Reliance was placed on Shittu v. Fashawe (2005) All FWLR Pt.278 pg.1017.

In the court of Appeal seven grounds of Appeal were filed but only one issue was formulated for consideration by the court. It was the omnibus issue. That explains why the court of Appeal had this to say on the issue of Estoppel.

"I do not find it necessary to deal with the issue of estoppel which has been adequately (sic) with by the learned trial judge in his judgment. In any event, the issue of estoppel cannot in fact be considered under the appellants' sole issues for determination".

I am in complete agreement with the findings of the Court of Appeal, but I earlier commented on the inelegant state of the appellants' Notice of Appeal and the justice in the matter demands I address this issue on Estoppel.

The well laid down position of the law is that where a judgment is final, and on the merits, and delivered by a court of competent 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 the decision is final on the same question and between the same parties it is binding until upset on appeal.

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 delivered 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.***

Res judicata estoppel is necessary to ensure the conclusiveness of judicial decisions and that individuals ought to

be protected from vexations and multiplicity of Suits. See *Odievivedie v Echanokpe* 1987 1NWLR pt 52 p.633, *Okpuruwu v Okpokam* 1988 4NWLR pt 90 p.554, *Udo v Obot* 1989 1NWLR pt 95 p.59.

B My lords, in suit No:W/108/94- Exhibit K. The claim was for recovery of possession, Mesne profit and Perpetual Injunction. Suit No: SC.209/1972 is the judgment from the appeal in Exhibit K. The parties and subject matter in Exhibits K and L are not the same as in this suit.

C In Exhibit K the claim in the main was for Recovery of possession, while in this case it is for Title, to determine the true owner of the property. A claim for possession is separate and distinct from a claim for title. A person in possession, or entitled to possession is not necessarily the owner of the property.

D Accordingly, Exhibits K and L do not operate as estoppel as the decision in those suits did not decide the same question as the question in this appeal. Furthermore, the parties are different.

ISSUE 2

E Whether the 1st- 3rd respondents rather than the appellants proved their case for title and thus entitled to judgment.

The 1st - 3rd respondents, as plaintiffs' claimed that the landed property now known as No.1 Robert Road, Warri and referred to as No.45 Warri/Sapele Road was given to their late grandmother, Late Madam Edomi Ogbe during her life time by her father, Late Chief F Ogbe Yonwuren, who owed vast land along Warri/Sapele Road including the said No.1 Robert Road. It is their case that being the surviving grandchildren of Late Madam Edomi Ogbe, in the absence of their deceased parents who administered the property before their G death, are entitled to Letters of Administration of the property. On the other hand, the appellants as defendants' case is that the property in dispute did not belong to Madam Edomi Ogbe, but that it formed part of the area known as Ogbe-Ijaw, then owed by Ijaws, and that following the acquisition of the area by the Government of H Nigeria, the Government granted leases, and that on 15/5/1930 the Government of Nigeria granted Lease of the property in dispute to Solomon Benson Henry Dakolo the father of the defendants/appellants.

In all cases on land the first task is to identify the land or prop-

erty in dispute. Where the identity of the land is in dispute it is resolved by each side producing Survey plans supported by credible evidence to satisfy the court of the land or property in issue. But where the land or property is well known to both sides, the need no longer arises. In this case the identity of the property is not in issue. It is clear that No.1 Robert Road and No.45 Warri/Sapele Road is the same property as No.1 Robert Road, called No.45 Warri/Sapele Road. B

In proof of Title to the property the respondents relied on Traditional evidence while the appellants' relied on evidence of acts of ownership. In his submissions learned counsel for the appellants observed that both the court below and the trial court were in error to hold that the 1st - 3rd respondents proved their case for title and are thus entitled to judgment. He argued that the traditional history relied on by the respondents did not satisfy the condition laid for its acceptance. Reliance was placed on *Anabaronye v Nwakaihie* 1997 1 SCNJ p.161. C D

Learned counsel argued that Exhibit D was authentic notwithstanding the alteration on it since there is no reliable evidence as to the time when the alteration complained of was made, contending that the findings of both courts below on Exhibit D ought to be set aside. E

He further argued that the respondents were unable to lead credible evidence of acts of ownership and possession. Concluding, he submitted that it was the appellants rather than the 1st - 3rd respondents that proved their case for title. F

Learned counsel for the respondents argued that the findings of fact made by the trial court and affirmed by the Court of Appeal became concurrent findings of fact which this court will not lightly interfere with, contending that finding of a judge based on facts will not be interfered with unless the findings are perverse. Reliance was placed on: G

He submitted that since learned counsel for the appellants failed to show that any of the findings of the learned trial Judge was perverse there was nothing upon which the specific finding of fact could be disturbed by the Court of Appeal. Concluding he observed that there is nothing to warrant this court to interfere with the concurrent findings of the two courts below. H

There are five ways in which ownership/title to land may be proved.

They are:

1. Proof of traditional evidence;
 2. Proof of acts of ownership, acts by persons claiming the land such as selling, leasing, renting out all or part of the land, or farming on it or otherwise utilizing the land beneficially. Such acts of ownership extending over a sufficient length of time and numerous and positive enough to warrant the inference that he is the true owner;
 3. Proof by production of document of title which must be authenticated;
 4. Proof of ownership by acts of long possession and enjoyment in respect of the land to which the acts are done;
 5. Proof of possession of connected or adjacent land, circumstances rendering it probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.
- (See *Amajideogu v Ononaku* 1988 2 NWLR pt.78 p.616, *Piazo v Tenalo* 1976 12 SC p.31, *Idundun v. Okumagba* 1976 9 - 10 SC p.224, *Omorie v. Idugiemwanye* 1985 2 NWLR (Pt.5 p.41)

In proof of title to the property in dispute the respondents (1st - 3rd) relied on Traditional evidence or history.

Now, History is all about evaluating belief on the basis of credibility. Declaration of title to land is granted at the discretion of the trial judge after hearing both sides, and to succeed a plaintiff must show how the land devolved and eventually came to be owned by him. This is done by the plaintiff narrating a continuous chain of devolution which is tested by cross-examination. On conclusion of oral testimony the trial judge is to decide which of the two are telling the truth and proceed to grant a declaration of title to the side that he is impressed with.

The plaintiff succeeds on the strength of his case and not on the weakness of the defendants' case. (See: *Kodilinye v. Mbanefo Odu* 2 WACA p.336.) It is only where there is conflict in traditional history that the approach to resolve the issue spelt out in *Kojo the II v. Bonsie & Anor* 1957 2 WLR p.1223 applies.

The respondents relied on the fact that the property in dispute was a gift by their grandmother's father, Chief Ogbe Yowuren, to her Madam Edomi Ogbe as their root of title, while the appellants relied

on Exhibit D the lease granted to their father by the Government of Nigeria on 15/5/1930. The learned trial judge examined Exhibit D and observed as follows:

"A look at plan A attached to Exhibit D shows the name of Edomi on top of it cancelled and the name Solomon Dakolo is written on top of it. Equally a look at plan B attached to Exhibit D also shows the name of Miller Brothers on top of it erased and cancelled and the name of Solomon Dakolo is written on top of it"

After reviewing the testimony on oath of PW5 and PW6, a deed registered in the Lands Registry Asaba, and a Chief Surveyor, the learned trial Judge concluded thus:

"...The unchallenged evidence of PW5 and PW6 which I accept and believe shows clearly that plans A and B in Exhibit D were tampered with and therefore are not only questionable and unauthentic but fraudulent ...I find as a fact ...that it was the father of the defendants (appellants) who altered Plans A and B attached to Exhibit D and inserted his name on them.

To further support his finding the learned trial judge observed that:

"The name Edomi is shown on the plan attached to Exhibit B which is the original name with which the survey plan was produced and signed by the Surveyor General at that time. This also goes to show that Madam Edomi was in possession of the land at the time Exhibit B was made otherwise her name could have not appeared on it..."

The learned trial Judge believed the traditional history/evidence of the respondents (1st, 2nd and 3rd), that the property in dispute was given to Madam Edomi Ogbe as a gift by her father, Chief Ogbe Yowunren, and she had been in physical possession several years before 1930. The respondents thus proved title by traditional history. After examining evidence the Court of Appeal quite rightly in my view agreed with the learned trial Judge. That court said:

"I have perused the record and from the evidence adduced by the respondents as plaintiffs, relevant portions of which have been reproduced in this judgment. I am satisfied that the learned trial Judge fully appraised and gave probative value to the relevant evidence before making his findings and coming to the conclusion which he reached".

A lease agreement loses its authenticity once altered. Where a lease

agreement or/and its attachments are altered or tampered with, the presumption of regularity can no longer be ascribed to it. Such a document is no longer authentic. With the alterations on Exhibit D, the case of the appellants crumbles. On the other hand the consistent testimony of the respondents witnesses tracing root of title and a short
 B chain of devolution remains unassailable for all times. Concurrent findings of the courts below are correct.

Unchallenged evidence shows that when Solomon Benson Henry Dakolo married Madam Edomi (the grandmother of the respondents) he lived with her in her house. He survived her, so it was easy for him to alter Exhibit D, thereby claiming his dead wife's property. Findings of fact by the trial court, which have been confirmed by the Court of Appeal, would not be upset by this court except the findings are perverse or were not supported by credible evidence, or there is/was miscarriage of justice or violation of procedure or neglect of some principle of law. (See Balogun v. Adejobi 1995 2 NWLR pt.376 pg.131, Iroegbu v. Okwordu 1990 6 NWLR pt.159 pg.643, Onifade v. Olayiwola 1990 7 NWLR pt.161 pg.130)

The following findings of facts made by the learned trial judge were confirmed by the Court of Appeal.

1. The land in dispute was owned by Chief Ogbe Yonwuren. He gave it to his daughter, Madam Edomi Ogbe, (as a gift) the grandmother of the 1st - 3rd respondents.

2. The father of the appellants, Solomon Dakolo in an attempt to convert/claim the land as his own fraudulently altered survey plans Exhibit A and B attached to Exhibit D.

3. Madam Edomi Ogbe (deceased) built structures on the land and had been in possession prior to 1930 when exhibit D was executed.

These findings are not perverse, rather they are the truth, and the Court of Appeal was correct to confirm them. In the circumstances concurrent findings of fact by the courts below are unassailable.

ISSUE 3.

Whether or not the Court of Appeal made a correct approach to the appellants' case having regard to the state of the Law, the

treatment given to the issue for determination, grounds of appeal, the Law and the approach adopted.

Learned counsel for the appellants observed that the Court of Appeal did not properly consider the appellants' case before affirming the decision of the learned trial Judge, contending that the Court of Appeal was wrong to strike out all but one of the seven grounds of appeal, thereby failing to consider the arguments considered in the appellant's brief. He urged this court to consider all points canvassed in the appellants' brief and find in favour of the appellants. Reliance was placed on: Ibrahim v. Mohammed 2003 6 NWLR Pt.817 p.615, Agbo v. State 2006 6 NWLR Pt.977 p.545.

Learned counsel for the respondents observed that the Court below was right when it heard the appeal based on the sole issue formulated by the appellants and struck out the other grounds of appeal from which no issues were raised as abandoned. Reliance was placed on: Aigbobachi v Aifuwa 2006 ALL FWLR pt.303 p.202. In the Court of Appeal, the appellants filed seven grounds of Appeal, and only one issue was formulated by the appellants for determination. It reads:

Whether the learned trial Judge was right in entering judgment in favour of the 1st - 3rd respondents having regard to the facts and legal issues placed before him and the approach adopted by him.

This issue is formulated from the omnibus ground which reads:

"Judgment is against the weight of evidence"

Where no issue is formulated in respect of ground/s of appeal, the ground/s of appeal from which no issue was/were formulated is/are deemed abandoned and ought to be struck out by the Court of Appeal. In this case the Court of Appeal was correct to strike out grounds 2 - 7, since they were abandoned by the appellants. See Western Steel Works v Iron and Steel Workers Union 1987 1 NWLR Pt.49 p.304, Ndukwe v Okocha 1992 7 NWLR Pt.252 p.131, Obasi v Onwuka 1987 3 NWLR Pt.61 p.369.

Appeals are argued on issues and not on grounds of appeal. Respondents' brief before the Court of Appeal was thus faulty, and it is not the business of that Court to make a case for the appellants. The Court of Appeal was correct not to consider arguments in the brief that were not from any issue. See Ibrahim v. J.S.C Kaduna

State 1998 12 SC p.20, P. Obiorah v. P. Osele 1989 1 SC Pt.11 p.60
The approach adopted by the Court of Appeal and its findings are correct. I find no substance in this appeal. It is hereby dismissed. Parties to bear their own costs.

B

MUSDAPHER JSC

I have read before today, the judgment of my lord Rhodes-Vivour just delivered in this matter. I entirely agree with the aforesaid judgment. For the same reasons contained in the aforesaid judgment, I too, find no merit in this appeal; I dismiss it and affirm the decision of the court below. I agree that each of the parties should bear their costs.

D

CHUKWUMA-ENEH JSC

I have had the advantage of reading before now the judgment of my learned brother Rhodes-Vivour JSC and I agree with his reasoning and conclusion that the appeal is unmeritorious and should be dismissed. I abide by the orders contained in the lead judgment.

ADEKEYE JSC

I was privileged to read before now the judgment just delivered by my learned brother B. Rhodes-Vivour, JSC. The facts of this case are as ably and fully narrated by my lord in his Lead Judgment.

The 1st - 3rd respondents were the plaintiffs in a consolidated suit registered as W/135/94 and W/163/94 in the High Court of Delta State Warri Judicial Division, while 1st -3rd appellants and the 4th respondent were the defendants. The plaintiffs/respondents claimed in their amended writ of summons in Suit No. W/135/94 a declaration that No. 1 Roberts Road, Warri and No. 45 Warri/Sapele Road Warri are the bonafide property of their grandmother Madam Edomi Ogbe, and that they are entitled to be granted Letters of Administration by the Probate Registrar of the High Court, the 4th defendant/respondent and not the appellants. The 4th defendant/respondent is to be directed to issue the letters to the respondents while the appellants and their privies and heirs are to be restrained from acting upon

the Letters of Administration already issued to them.

The learned trial Judge was satisfied with and pronounced as credible the traditional history of the plaintiffs/respondents that the property originally belonged to chief Yonwuren who made a gift of same inter vivos under Customary Law to his daughter, the grandmother of the 1st - 3rd respondents, Madam Edomi Ogbe. B

The learned trial judge rejected the evidence of the appellants that the property in dispute did not belong to Madam Edomi Ogbe but formed part of an area of land known as "Ogbe-Ijaw" at that time owned and occupied by the Ijaws. The government consequently acquired the area and it came to be known as crown land. The government phased out the land and granted leases of the portions including the disputed land to interested persons including their father Solomon Benson Henry Dakolo in 1930 vide the lease admitted at the trial as Exhibit "D". C D

The learned trial Judge gave judgment to the respondent. The appellants being dissatisfied with the judgment lodged an appeal at the Court of Appeal Benin Division. The lower court upheld the specific findings of facts by the learned trial judge in favour of the respondents and affirmed the judgment. The appellants came to this court on a further appeal. The 1st - 3rd respondents filed a notice of preliminary objection that grounds 2, 3, 4 and 5 of the appellants' grounds of appeal and issues 1, 2, and 3 for determination settled there from are incompetent and should be struck out. E

The preliminary objection is incorporated in the appellants' brief. The respondents argued in support of the objection that ground 2 of the ground of appeal is not only repetitive of ground 1, it is also argumentative, and constitute complaints against the judgment of the High Court. This court has no jurisdiction to hear appeal against the judgment of the High Court. Grounds 3, 4 and 5 which challenge the judgment of the Court of Appeal, the particulars set out under the three grounds relate to the judgment of the learned trial Judge. Grounds 3, 4 and 5 do not constitute a challenge to any ratio of the judgment of the lower court. The 1st - 3rd respondents cited cases in support of the preliminary objection. F G H

(Opara v. Dowell Schlumberger Nig. Ltd (2006) All FWLR pt. 336, Pg.240 at pg.263, Honika Sawmill Nig. Ltd. v. Mary Okojie Hoff (1994) 2 NWLR pt. 320 Pg.253, Saraki v. Kotoye (1992) 9 NWLR

pt.261, pg. 156 at 184)

The appellants reacted to the respondents' preliminary objection by holding that it is unwarranted and incompetent as the same legal points had once been raised and argued by the counsel to the parties on the 7th day of September 2004, when the appellants were requesting for leave to file the grounds. The appellants as respondents in that application argued that the grounds of appeal were incompetent. The court over ruled the respondents in its ruling delivered on the 26th of June 2006. The respondents have no legal justification to raise the same issues a second time running. This court cannot review itself on the same point all over again. Reference was made to the case - *Onwuka v. Maduka* (2002) 18 NWLR pt.799, pg. 586 at page 508 - 509 in support of the contention.

The appellants further argued that the respondents are not misled by any of the grounds of Appeal or their particulars. The grounds are not invalid. The courts nowadays are more concerned with doing substantial justice than to give way to technicalities in hearing of a case.

Further, where the ground of appeal clearly states what the appellant is complaining about and does not occasion a miscarriage of justice, it would be allowed even if the particulars are said to be argumentative, narrative or inelegantly couched. The appellants further made reference to cases: *Military Administrator, Benue State v. Ulegede* 2001 FWLR pt.78, pg.1268 at pg. 1283-1284, *Justice Party v. INEC* (2006) All FWLR, pt.339, pg.907.

They urged that the objection is unwarranted and must consequently be dismissed.

I have carefully considered the legal points argued by both sides in the preliminary objection raised by the respondent in this appeal. I sincerely agree that a ground of appeal must be couched in such a way as to attack the judgment of a court on the issue decided by it. In this case under consideration - we have the concurring judgments of two lower courts. In a situation in which the judgment of the lower court affirms the judgment of the trial court, it is inevitable in the course of arguing an appeal not to recurrently make reference to the judgment of the trial court. It does not mean that the appellants predicated their grounds of appeal in this court directly on the findings of the trial court - that is constitutionally unacceptable.

On the other hand, a ground of appeal should contain precise, clear, unequivocal and direct statement of the decision being attacked. A ground of appeal must give the exact particulars of the mistake, error or misdirection alleged as parties are bound by their grounds of appeal. Parties are therefore not at liberty to argue grounds which are not related to the judgment appealed against. B

(Kalu v. Uzor (2006) 8 NWLR pt. 981, pg.66, Saraki v. Kotoye (1992) 9 NWLR pt.264, pg. 156, Bhojson Plc. v. Daniel Kalio (2006) 5 NWLR pt.973, pg.330, Shanu v. Afribank (Nig) Plc, (2002) 17 NWLR Pt.795. pg.185.)

Grounds of appeal are to be differentiated from their particulars - while the grounds of appeal must clearly state what the appellant is complaining about, whereas the essence of the particulars of a ground of appeal is to set out briefly the aspect of the substantive law or procedural law that is affected by the error or misdirection identified or complained of in the ground of appeal. The fact that a ground of appeal is argumentative or repetitive is not sufficient to deny the appellant his right of appeal when on the face of the ground of appeal notable issue arises for consideration by the court. As rightly observed by the appellants the activists approach to adjudication of matters is to avoid technicality as the principal duty of the court is to do justice. (Obembe v. Ekeke (2001)10 NWLR pt.722, pg. 677 C D E

Agbi v. Ogbah (2005) 8 NWLR pt.926. pg 40.) The grounds of appeal and the particulars in this appeal may appear to be argumentative and repetitive; they equally raise triable issues which will sustain this appeal. The preliminary objection is on this premises overruled and struck out. F

The issues raised for determination by the parties, besides that of challenging whether the Court of Appeal was right in holding that the issue of estoppel was adequately dealt with, and could not be considered by that court, the bone of contention is predominantly challenging the concurrent findings of fact of the two lower courts. G

The fundamental effect of estoppel *rem judicatam* or estoppel by record is that where an issue of fact has been judicially determined in a final manner between the parties or their privies by a court or tribunal having jurisdiction in the matter and the same issue comes directly in question in subsequent proceedings between the parties or their privies. H

The principle of *res judicata* effectively precludes a party to an action or his privies from disputing against the other party in a subsequent suit, matter or issue which had been adjudicated upon previously by a court of competent jurisdiction between him and his adversary involving the same issue. The attributes in short are:-

- B (a) Parties or their privies must be the same with those in the previous suit.
- (b) Issues for determination must be the same.
- (c) Adjudication in the previous case must have been by a court of competent jurisdiction.
- C (d) Previous decision must have fairly decided the issues between the Parties.

A successful plea of *res judicata* -

- (1) Ousts the jurisdiction of the court in the proceedings in which it is raised.
- D (2) The decision operates as a bar to a subsequent litigation.
- (3) As evidence it is conclusive between the parties to it.

(*Ntuks v. N.P.A* (2007) 13 NWLR pt.1051, pg.392, *Ukaegbu & 8 Ors v. Ugoji & 3 Ors* (1991) 6 NWLR Pt.106 pg.177, *Osunrinde & 7 Ors v. Ajamogun & 5 Ors* (1992) 6 NWLR Pt.246, pg.156, *Alhaji Ladimeji & Anor v. Salami & 2 Ors* (1998) 5 NWLR Pt.548, pg.1.)

Any court having the foregoing attributes of estoppel per rem judicatam at the back of its mind will surely conclude that the cases W/108/94 Exhibit I and S/209/1972 Exhibit L could not constitute estoppel as the parties in both of them differ.

The question raised by the appellants is whether the 1st -3rd respondents are entitled to judgment on their case and whether the Court of Appeal made a correct approach to the appellants' case having regard to the state of the law the treatment given to the issue for determination, grounds of appeal, the law and the approach adopted. In such circumstance the court will advert its mind to the evidence before it, and will thereafter ascribe probative value to the evidence, and then proceed to weigh the evidence before it on that imaginary scale and appreciate upon the preponderance of evidence which side the scale weighed having regard to the burden of proof. (*Agbanifo v. Aiwereoba* (1988) 1 NWLR pt.70, pg. 325, *MISR (Nig) Ltd v. Ibrahim* (1975) 5 SC, pg.55, *Egonu v. Egonu* (1978) 11 - 12 SC pg.111, *Mogaji v. Odofoin* (1998) 4 SC, Pg 91, *Abisi v. Ekwealor*

(1993).)

The court below was right to have affirmed the judgment of the trial court as it gave exhaustive consideration to the sole issue formulated by the appellants for determination of the court. In the judgment of that court at pages 314, lines 5 - 10 of the record the court held that:-

"I have perused the record and from the evidence adduced by the respondents as plaintiffs, relevant portions of which have been reproduced in their judgment, I am satisfied that the learned trial judge fully appraised and gave probative value to the relevant evidence before making his findings and coming to the conclusion which he reached. The court below thereafter affirmed all the relevant findings of fact and the conclusion made by the trial court."

It is trite law that this court is not in the habit of interfering with the concurrent findings of the lower court save in compelling circumstances like:-

- (1) Where the findings of fact are perverse.
- (2) Patently erroneous.
- (3) Where there is miscarriage of justice.

(4) Not the result of a proper exercise of judicial discretion. (Ogbu v. Wokoma (2005) 7 SC pt. 11 pg 123, Alakija v. Abdullahi (1995) 5 SC 1, Uka v Irolo (2002) 7 SC Pt.11 Pg. 97, Okonkwo v. Okonkwo (1998) 10 NWLR pt.571, pg 554, Atolagbe v. Shorun (1985) 1 NWLR Pt.2, pg.360, INCAR v. Adegboye (1985) 2 NWLR Pt.8, pg.453, Abidoye v Alawode (2001) 3 SC 1, Ojomu v Ajao (1983) 9 SC pg.22.)

With fuller reasons given by my lord B. Rhodes-Vivour in the lead judgment, I also dismiss the appeal, and affirm the judgment of the lower court. Parties are to bear their costs.

GALADIMA JSC

This is an appeal against the judgment of the Court of Appeal Benin Division, holden at Benin City, delivered on 8/3/2002. In that judgment the Court dismissed the Appeal lodged by the Appellants herein and affirmed the decision of the High Court of Delta State sitting in Warri delivered by AKPIROROH (J), as he then was on 7/8/1998 in two consolidated Suits Nos. W/135/94 and W/163/94,

wherein the Appellants herein were Defendants and 1st -3rd Respondents herein, plaintiffs.

The 1st - 3rd Respondents, as plaintiffs, at the trial Court, in line with their further Amended Statement of claim dated 13/6/96 and through the evidence of the 2nd Respondent and other witnesses (PW1 - PW6) claimed that the property in dispute situate at No. 1, Robert Road, Warri, belonged to their Grandmother, late Madam Edomi Ogbe and that they, as survivors of their said Grandmother, are entitled to the grant of Letters of Administration.

It is further claimed that the original owner of the land was Chief OGBE YONWUREN who owned vast portions of land along Warri/Sapele Road and Robert Road. That the said Chief Ogbe Yonwuren subsequently shared the said land under Itsekiri Native Law and Custom amongst his numerous children including his daughter Madam Edna Edomi to whom he gave No.1 Robert Road, Warri, the property in dispute. The Respondents further claimed that their said Grandmother carried out some building structures on the land and lived thereon long before she got married to one Solomon Benson Henry Dakolo, the father of the Appellants. It is the case of the Respondents that being the surviving children of late Madam Edomi Ogbe, whose parents administered the properties before the death of the last of them in 1992, they are therefore entitled to Letters of Administration.

The Appellants on the other hand in their statement of Defence and from the evidence they led at the trial court conceded that the property in dispute did not belong to Madam Edomi Ogbe but formed part of an area known as OGBE-IJOH then owned and occupied by Ijaws. That following the acquisition of the area by the Nigerian Government, the said area was ceded as "Crown Land" and the Government took over the ownership and control of the said land and granted leases of the portions of the area including the disputed portion. It is this disputed portion that was granted by the Government to the Appellants' father the said Solomon Benson Henry Dakolo in 1930 vide the lease admitted at the trial as Exhibit "D".

In his judgment, the learned trial Judge found as a fact that the property in dispute originally belonged to CHIEF OGBE YONWUREN who made a gift of same inter-vivos under Customary Law to his daughter Madam Edomi Ogbe the Grandmother of the 1st and 3rd

Respondents. In other words the trial Judge accepted the traditional evidence of the 1st and 3rd Respondents, upheld their case, and totally rejected the evidence of the Appellants and dismissed their case.

The Appellants were not satisfied with the decision of the trial court, hence they appealed to the Court of Appeal which dismissed the Appeal and the specific findings of facts by the learned trial judge in favour of the Respondents were affirmed. It is against these concurrent findings of facts by the two courts below that the Appellants herein have further Appealed to this Court.

Briefs of argument were filed and exchanged by counsel for the respective parties. Appellants' brief and a Reply brief were filed on 27/9/2006 and 5/11/2009 respectively. Brief of the Respondents was filed on 9/10/2009, incorporated in the Respondents' brief of preliminary objection.

In the Appellants' Brief of Argument three issues identified from five grounds of appeal are as follows:

"(i). whether the Court of Appeal was right in holding that the issue of estoppel was adequately dealt with and could not be considered (Ground 2).

(ii). whether the 1st - 3rd Respondents rather than the Appellants proved their case for title and thus entitled to judgment (Grounds 2, 3, 4, and 5).

(iii). whether or not the Court of Appeal made a correct approach to the Appellants' case having regard to the state of the law, the treatment given to the issue for determination, grounds of appeal, the law and the approach adopted. (Ground 1).

The two issues raised by the Respondents for determination are:

"1. Whether the Court below was right when it adopted and considered the sole issue for determination formulated by the other grounds of Appeal from which no issues were formulated.

2. Whether the Court below was right when it affirmed the judgment of the trial court based on the sole issue for determination submitted to it by the Appellants".

The objection raised by the 1st - 3rd Respondents is that Grounds 2, 3, 4 and 5 of the Appellants' Grounds of Appeal and issues 1, 2 and 3 for determination distilled therefrom are incompetent and should be struck out. The grounds of objection are that:

(i) Ground 2 is a repetition of ground 1.

(ii) Particulars (i) - (iv) set out under the said ground 2 are argumentative and constitute complaints against the judgment of the High Court.

(iii) Ground 2 does not arise from the judgment appealed against as the issue of estoppel was not submitted to the court below for determination, Ground 3 of the Appeal to the court below having been struck out by that court as no issue was distilled from the said ground.

(iv) Particulars (b) (c) and (d) to the said Grounds 2 are repetitions of the particulars set out under Ground 1.

I have carefully examined the grounds of Appeal and the issues that were formulated therefrom. No doubt the grounds are inelegantly couched or drafted. They are prolix, but the substance of the Appellants' complaints are clear, and are against the ratio of the judgment of the Court below. It is settled that this Court will always make the best that it can, out of a bad or inelegant ground or brief in the interest of justice. See *OWNER OF M.V. ARABELLA v. NIG. AGRICULTURAL INS. CORP.* (2008) 4 - 5 SC. (pt. 11) 189; *EKPEMUPOLO & 4 ORS v. EDREMODA & ORS* (2009) 3-4 SC. 56 and *LASISI OGBE v. SULE ASADE* 12 SC (pt.III) 37. The Appellants' grievance is against concurrent findings of fact by the two Courts below. In the circumstance, I shall adopt the three issues set out above by the Appellants for determination of this appeal.

On ISSUE 1, whether the Court of Appeal was right in holding that the issue of estoppel was adequately dealt with and could not be considered, learned counsel for the Appellants' has made the following observation:

That the Respondents are estopped from contesting title to No. 1 Robert Road, Warri with the Appellants, in view of the judgments, in suits Nos. W/108 194 - Exhibit K", SC.209/1972 - Exhibit L. Reliance was placed on section 151 of the Evidence Act, and the case of *OSURINDE v. AJAMOGUN* (1972) 7 SCN (PT.1) 106.

Placing reliance on *SHITTU v. FASHAWO* (2005) ALL FWLR (pt.278) p.1017, learned counsel for the Respondents observed that the issue of estoppel having been dealt with by the trial High Court, it cannot be raised in this Court without leave of this court. It is contended that the Appellants' argument on this point for this reason, is

incompetent and liable to be struck out.

The Appellants herein appealed on seven grounds but formulated a single issue for determination. The court below held that the sole issue submitted to it by the Appellants for determination was formulated from ground No.1, the “OMNIBUS ground”. The Court below was right when it heard the appeal based on the sole issue formulated by the Appellants. The Appellants having distilled issues on grounds 2 - 7 of the Grounds of appeal having been struck out, the 1st - 3rd Respondents’ five issues had become otiose and served no useful purpose. However, having taken the view that the inelegant Notice of Appeal of the Appellants, as it may, should be considered in the interest of justice, I shall on that account consider the issue of estoppel raised by the Appellants. It is trite law the Court is not allowed to alter the effect of its own decision on an issue that has been previously decided by it in the course of the same proceedings. The reversal of such decision is only on appeal. The principle is aimed at bringing an end to litigation as unsuccessful litigants are likely to re-open issues decided at later period. In suit No.W/108/94 - Exhibit K, the claim was for recovery of possession, mesne profit and perpetual injunction. Suit No. SC/209/1972 is the judgment from the appeal in Exhibit K. The parties in the two Suits are not the same. The claim in the case at hand is for title to determine the real owner of the property in dispute. It is in view of the foregoing that I hold that Exhibits K and L do not operate as estoppel. I cannot apply the principle of estoppel per rem judicatam.

On the second issue, the question is whether the 1st -3rd Respondents rather than the Appellant proved their case for title and thus entitled to judgment. I have observed that the Court below affirmed the judgment of the trial court. This is after exhaustive consideration of the Sole issue. Having painstakingly reviewed the case put forward by each side and evidence of their respective witnesses, the Court below held at page 334, lines 5 - 10, of the Record of proceeding thus:

“I have perused the record and from the evidence adduced by the Respondents as plaintiffs relevant portions of which have been reproduced in this judgment, I am satisfied that the Learned Trial Judge fully appraised and gave probative value to the relevant evidence before making his findings and coming to the conclusion which

he reached.”

From the above passage, the Court below affirmed all the relevant findings of facts and the conclusion made by the trial court.

When a trial Court, which observed and heard witnesses who testified before it, has evaluated the evidence of such witnesses, based on the credibility of those Appellant witnesses, and drawn conclusion thereon, an Appellate Court cannot interfere with same, unless it is demonstrated that such conclusions are perverse, and not supported by unchallenged credible evidence: See *AGBI v. OGBEH* (2006) 11 NWLR (pt. 990) 65, *NWOKOROBIA B. V. NWOGU* (2009) ALL FWLR (pt. 476) 1868 at 1880. The Appellants having failed to show that any of the findings of the learned trial Judge was perverse, there was nothing upon which the specific findings of fact of the learned trial judge could be disturbed by the Court below. The specific findings of fact made by the learned trial Judge which were confirmed by the court below are as follows: That the land in dispute was owned by Chief Ogbe Yonwuren and he gave the said land to his daughter Madam Edomi Ogbe, the grandmother of the 1st - 3rd Respondents. That the father of the Appellants, Solomon Dakolo in an attempt to convert the land as his own fraudulently altered survey plans Exhibits A and B attached to Exhibit D. That Madam Edomi Ogbe built structures on the land and had been in possession prior to 1930 when Exhibit D was executed. These findings of facts are not perverse. The Court of Appeal was correct to confirm them.

In view of my resolution of the two issues herein in favour of the Respondents, I do not intend to consider the third issue in this appeal. It has been adequately treated by my learned brother in his leading judgment.

In the light of the foregoing contribution and the more detailed consideration of all the issues raised in the appeal leading to the much fuller reasoning and conclusion of my Learned Brother BODE RHODES-VIVOUR JSC, I too find no substance in this appeal. It is accordingly dismissed without costs to the Respondents.