

SUPREME COURT OF NIGERIA

13TH APRIL, 2012. SC. 59/2003

**CORAM:- A. M. MUKHTAR, F. F. TABAI, S. GALADIMA,
N. S. NGWUTA, O. ARIWOOLA, JJSC**

1. OKWUDU NWAKONOB

2. NWEKE IGWEAGU

..... APPELLANTS

3. ROWLAND NWABUDE

(For themselves and on behalf of the
people of Ezi Umuanya village, Umuanya)

AND

1. BENEDICT UDEORAH

2. IGWEZE AKUNNA

3. HENRY ANONYE CHIGBO

..... RESPONDENTS

4. FESTUS CHIRA

5. UDOLISA NWOKAFOR

(For themselves and on behalf of the
people of Osile Ogbunike)

6. CHIEF OSITADINMA UMENYIORA

ESTOPPEL - Estoppel by standing-by - Proof - Party must establish that judgment was given against interest of another - Who knowingly did nothing - To safeguard the interest (H1)

ESTOPPEL - Estoppel by standing-by - Res judicata - Distinction - Whereas res judicata is a matter of record - Estoppel by standing-by is an equitable doctrine - Which is a question of fact (H2)

APPEALS - Issue - Not considered - Proof - For appellant to succeed - He must show that - Court failed to consider a particular issue in its judgment (H3)

APPEALS - Evidence - Evaluation - Where Court of Appeal makes finding - Based on evidence adduced in trial court - Supreme Court will not interfere (H4)

LAND LAW - Title - Proof of Possession - Previous judgment - Exhibits 16-18 were rightly used - To sustain claim to ownership of the land (H5)

FACTS

This land matter commenced at the High Court of Anambra State, Otuocha Judicial Division. Plaintiffs/appellants (acting in a representative capacity) claimed inter alia, against 1st – 5th defendants/respondents (also acting in representative capacity) and 6th defendant/respondent (acting in personal capacity), a declaration that the customary right of occupancy over the disputed land resides in appellants. At the trial appellants called 9 witnesses. They contended that the disputed land belonged to them. On the other side of the divide, 1st – 5th respondents called 3 witnesses. DW1 tendered various courts proceedings of previous legal actions in suit no. 0/63/61 between appellants' and respondents' families over the matter.

1st – 5th respondents stated that despite the fact that appellants were fully aware of the then legal actions, yet they (appellants) remained passive throughout the duration of the actions. As such, 1st – 5th respondents relied on the defence of estoppel by standing by. 6th respondent did not participate in the whole proceedings. At the conclusion of evidence, the learned trial judge granted the reliefs sought by appellants. Aggrieved, 1st – 5th respondents appealed to the Court of Appeal, Enugu Division. The court after a review of the issues raised, allowed the appeal and held that appellants were caught by the doctrine of estoppel by standing-by. The judgment of the trial court was thus set aside. Dissatisfied, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

i. Whether the court below was correct in holding that the Appellants are afflicted and caught by the doctrine of estoppel by standing by with respect to the land in dispute.

ii. Whether the court below failed to consider and or avert its mind to evidence of acts of possession by the Appellants at the trial court in respect to the land in dispute.

iii. Whether the court below properly interpreted Exhibits 16, 17 and 18 to come to the conclusion that the exhibits represent parts of the land in dispute.

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

Estoppel by standing-by - Proof

1. In order for a court to rightly hold that the operation of the doctrine of estoppel by standing by has effectually come into play the party must have established necessary conditions. In other words the following must be shown to establish the operation of the doctrine -

1. That the judgment has been given in a case over the same matter in which another has an interest;

2. That the other party knew his rights or interests were being adversely affected.

3. That in spite of the knowledge of this, the other party did nothing. (p. 1562 D)

Estoppel by standing-by - Res judicata - Distinction

2. The court below made a striking contrast between estoppel by conduct or standing by and estoppel per rem judicatam; though the two can arise from the same set of circumstances, are however two distinct defences. Res judicata arises as a matter of record, whilst estoppel by standing by is an equitable doctrine and is essentially a question of fact. The doctrine applies where a person is content to be a spectator, rather than a gladiator, an on looker rather than a player, leisurely waiting for the outcome of the battle or the play, as the case may be. It must be shown that the person knew that his rights or interest were being adversely affected, and yet chose not to do anything about it. The party needs not to be a party in the previous action or qualify as a privy in interest. If he were so res judicata would apply. A non-party therefore could be estopped and thereby be bound by the previous judgment, if he knew or ought to have known the pendency of the previous suit and chose to stand by. Such knowledge is either actual or imputed. (p. 1565 A)

APPEALS - Issue - Not considered - Proof

3. For a ground of failure to consider certain issue to succeed the Appellants must show that from the judgment of the court below, the court did not consider or avert its mind to that particular issue. (p. 1566 A)

APPEALS - Evidence - Evaluation

4. After a careful examination and consideration of all evidence presented by both parties, the court below rightly held as follows:-

"I have carefully considered all the evidence led in this case as borne out by the various exhibits and I am of the view that if the lower court had properly assessed the evidence, it would have no difficulty in arriving at the conclusion that the weight of evidence was on the Appellants' side bearing in mind that they claimed nothing."

It is in the light of the foregoing that I hold firm view that the court below properly considered evidence of acts of possession of both parties and carefully weighed the said evidence that is both the oral evidence of the Appellants and the documentary evidence of the Respondents at the trial court. Where the finding of the court below is borne out by the evidence adduced in the trial court, this court will not intervene or interfere. (p. 1567 C)

LAND LAW - Title - Proof of Possession

5. A judgment in a previous case may rightly be used to prove acts of possession. One of the modes of proving title is through acts of possession. Exhibits 16, 17 and 18 being the previous judgments were produced by the respondents at the trial to sustain their claim to ownership and possession of the areas of the land now in dispute. (p. 1570 C)

NOTABLE POINT OF INTEREST
MUKHTAR JSC

1. Unchallenged evidence – Admissibility of

The witness tendered the various courts proceedings of previous legal actions between the plaintiffs and defendants' families. By the above reproduced evidence the defendants proved that the subject matter in controversy was prior to this suit a subject of litigation in other suits between the two families. The evidence was not debunked by the plaintiffs. The position of the law is that evidence adduced that is relevant to a matter in controversy that has neither been challenged, nor debunked must be accepted and relied upon by the court. (p. 1571 D)

REPRESENTATION

Tochukwu Maduka Esq., for the Appellants

George-Etomi Esq. with S. Ebomure Esq. for 1st-5th Respondents

CASES REFERRED TO

- | | |
|---|---|
| Wilson Etiti & Anor v. Peter Ezeobi (1976) 12 SC 123 | B |
| Ekpoke v. Usilo (1978) 6 SC 187 | |
| Nana Ofori Atta II v. Nana Abu Bansra II (1958) AC 95 | |
| Anyaoke v. Adi (1986) 3 NWLR (Pt. 31) | |
| Balogun v. Agboola (1974) 10 SC 111 | |
| Ojiako v. Ogueze (1962) 1 SCNLR 112 | C |
| Alase v. Olori Ilu (1964) 1 All NWLR 390 | |
| Guardian Newspaper Ltd v. Ajeh (2005) 12 NWLR (Pt. 938) 205 | |
| Iragunima v. R.S.H.P.D.A. (2003) 12 NWLR (Pt. 834) 427 | |
| Okafor & Ors v. Obiwa & Anor (1978) 9 & 10 SC 115 | D |
| Idundun v. Okumagba (1976) NSCL 445 | |
| Omoregbe v. Lawani (1980) 3 - 4 SC 108 | |
| Ajao v. Ashiru (1973) 11 SC 23 | |
| Okike v. L.P.D.C. (2005) 15 NWLR (Pt. 949) 471 | |
| Oludamilola v. The State (2010) 5 SCM 166 | E |

LEAD JUDGMENT BY GALADIMA JSC

This is an appeal by the plaintiff's (now Appellants) against the judgment of the Court of Appeal, Enugu Division delivered on 25/4/2002 allowing the appeal of the defendants (now the Respondents) from the decision of Amaizu (J) as he then was) sitting at Otuocho Division of the High court of Anambra state delivered on 25/9/98. Dissatisfied with the decision of the court of Appeal, the Appellants have appealed to this court on three grounds by Notice of Appeal dated 18/7/2002 and filed on 22/7/2002. The facts of the matter leading to this appeal are simple.

Appellants commenced the action in a representative capacity against the 1st -5th respondents also in the same capacity and against the 6th respondent in his personal capacity by a writ of summon issued out at Onitsha Judicial Division of the High court of Anambra State. Upon the creation of the Otuocho Judicial Division, the suit was transferred to Otuocho and it was heard denovo by Amaizu J (as he then was). Pleadings were ordered and subsequently amended

severally by the parties. The reliefs claimed by Appellants are as follows:

“(1) Declaration of customary right of occupancy of the parcel of land known as and called “Nno Omo” situated at Ezi Umuanya village and verge pink on plan No.MEC/303/78J.

B *2. N10,000.00 general damage for trespass.*

3. An order of injunction restraining the defendants, their servants and agents from entering or remaining on “Nno Omo” land verged pink in the plan No.MEC/303/78 or doing anything, thereon or in any manner whatsoever interfering with the plaintiff’s rights of ownership and possession over the said land.”

At the trial the Appellants called 9 witnesses while the 1st-5th Respondents called 3 witnesses. The 6th Respondent neither filed any pleadings nor did he testify or take part in the proceedings at the trial High court or in the court below. At the conclusion of evidence the learned trial Judge in his considered judgment granted the Appellants the reliefs they sought. Aggrieved by this decision the 1st-5th respondents appealed to the Court of Appeal Enugu Division. The court after a review of the issues raised by both parties allowed the appeal and held that the respondents (appellants herein) were afflicted and caught by the doctrine of estoppel by standing-by. The judgment of the trial court was set aside. Dissatisfied the Appellants appealed to this court on grounds and distilled therefrom the following three issues:

F *1. Whether the learned Justices of the court below were right in holding that the appellants were afflicted and caught by the doctrine of estoppel by standing-by with respect to the land in dispute. (Ground No.1)*

G *2. Whether the learned Justices of the court below were right in disregarding or failing to advert their minds to the unassailable findings of acts of possession and ownership made by the trial court in respect of the land dispute by the appellants. (Ground No.2)*

H *3. Whether the learned Justices of the court below were right in their interpretation of Exhibits 16, 17 and 18 which led them to hold that the said Exhibits represent parts of the land in dispute. (Ground No.3)*

The 1st - 5th Respondents raised also two similar issues except issue 3 which is dissimilar. The issues are as follows:

i. Whether the court below was correct in holding that the Appellants are afflicted and caught by the doctrine of estoppel by standing by with respect to the land in dispute.

ii. Whether the court below failed to consider and or avert its mind to evidence of acts of possession by the Appellants at the trial court in respect to the land in dispute. B

iii. Whether the court below properly interpreted Exhibits 16, 17 and 18 to come to the conclusion that the exhibits represent parts of the land in dispute.

It has been noted that the 6th Respondent did not file any pleadings nor did he take part in the proceedings at the trial court or in the court of Appeal. However, on going through the Records, I came across a Notice of discontinuance of appeal against the 6th Respondent by the Appellant on 13/1/2010. Learned counsel for the Appellants should have drawn the attention of this court to that fact. I have carefully compared the issues set out by the parties for determination of this appeal. It is my respectful view that the issues formulated by the 1st -5th Respondents are quite apt and will effectively determine this appeal. I shall take them serially as they are presented. C D E

On the 1st issue bordering on the principle of estoppel, Learned Counsel for the Appellants has submitted that the court below were wrong in holding that the Appellants were caught by the doctrine of estoppel by conduct or estoppel by standing by with respect to the land in dispute. It is however, conceded by the Appellants that the 1st - 5th respondents duly pleaded in paragraphs 14 and 15 of their further amended statement of defence, the facts upon which the legal and equitable defences of estoppel by standing by, estoppel by conduct, acquiescence and admission against interest were predicated. F G Learned Counsel for the Appellants after making reference to some passages of the judgment of the court below and the evidence of PW1 and PW5, he still urged the court to hold that the court below erred on holding that the Appellants were caught by the doctrine of estoppel. His reasons are that: Dennis Nwabude who testified for the plaintiffs in suit No.0/63/61 did so not as a representative of the Appellants but merely acted on his own. That both the trial court and the court below did not find evidence that the Appellants either knew of his action of authorised him to do what he did. That the Appellants H

were not parties, to suit No.06/63/61 and nothing in evidence of PW5 under cross-examination can justify any conclusion that the Appellants knew of the case and did nothing. It is further contended that there was abundant evidence at the trial court that the Appellants and Respondents had demarcated their lands and their boundaries as far back as 1924 under oath and that the Appellants had remained in possession of the land continuously even while the 1961 case was on. Reliance placed on the case of *WILSON ETITI & ANOR v. PETER EZEObi* (1976) 12 SC 123 @ 131 - 132.

On their part the 1st - 5th Respondents have contended that from the evidence given at the trial High Court, the Appellants were shown to have been afflicted and caught by the doctrine of estoppel by standing by with respect to the land in dispute and that the court below rightly held so.

In order for a court to rightly hold that the operation of the doctrine of estoppel by standing by has effectually come into play the party must have established necessary conditions. In other words the following must be shown to establish the operation of the doctrine -

1. That the judgment has been given in a case over the same matter in which another has an interest;

2. That the other party knew his rights or interests were being adversely affected.

3. That in spite of the knowledge of this, the other party did nothing. See *EKPOKE v. USILO* (1978) 6 SC. 187 at 203; *NANA OFORI ATTA II v. NANA ABU BANSRA II* (1958) AC 95 at 103.

I shall relate the above conditions or factors to this case. It is instructive to note that in paragraph 1 of their further Amended statement of defence the 1st-5th Respondents placed reliance on all the legal and equitable defences open to them, namely Estoppel by standing by; Estoppel by conduct; Acquiescence and Admission against interest. In paragraphs 14, 15A, 16 and 17, they pleaded facts upon which the above defences were predicated in the following terms.

"14. In suit No 0/63/61 at the Onitsha High Court, the people of Akanato Ifite Umuanyo sued the present defendants of Osile Ogbunike for a declaration of title, damages, for trespass and injunction over ANI-UGWU-AKIDI which is being claimed in the instant case. The claim of the plaintiffs' the people of Akanato Ifite Umuanyo

was dismissed.

15. The present plaintiffs were aware of the proceedings referred to in paragraph 14 above and suffered the said people of Akanato Ifite Umuanya to fight the battle with the defendants. In the course of the said proceedings Dennis Nwabude of the plaintiffs' family testified for the people of Akanato Ifite Umuanya. The judgment in the suit and the pleadings therein including the plan filed by both parties, and the evidence of Dennis Nwabude will be founded upon. ^B

15A. In Ogidi Native Court suit No.11/26, Chief Obiesili of defendants' village, Osile Ogbunike, sued Nwosu of Ogbunike for trespass on Ugwu-Akidi land now in dispute and got judgment. That suit and judgment will be founded upon. ^C

16. About the year 1977, 25 people from the plaintiffs' family including the 1st, 2nd and 3rd plaintiffs on record trespassed on the land now in dispute and were subsequently arraigned before the Chief Magistrate Court Otuocha, for wilful and unlawful damage to the crops of Osile Ogbunike people on Ani-Ugwuakidi land now in dispute. ^D

17. The 1st named plaintiff, Okwundu Nwakonobi was the 8th accused and in his evidence he admitted that he was aware of suit No.0/63/61 between the people of Ifite Umuanya and Osile Ogbunike people and that the piece of land then in dispute people and that the piece of land then in dispute is, the same as the one now in dispute in 0/134/77. The defendants of Osile Ogbunike will rely on the said admission of Okwundu Nwakonobi and the judgment of the Chief Magistrate in the relevant charge No.MCN/303C/80." ^F

It is common and undisputed ground that EZI-UMUANYA the Appellants' community and AKANATO-UMUANYA community make up the AKANATO community. In the earlier action on which the plea of estoppel is predicated the AKANATO community sued the Osile Ogbunike people the Respondents herein at the Onitsha Judicial Division of the Anambra State High court in suit No.0/63/61 over the same piece of land in this suit on appeal. The Ezi-umuanya side of the community did not join as plaintiffs, but one Dennis Nwabude a prominent member of that community testified on behalf of the Appellants. His testimony was to the effect that the land in dispute belonged to the plaintiffs in suit No. 0/63/61 over the same piece of land in this suit on appeal. The Ezi-Umuanya side of the community ^H

did not join as plaintiffs, but one Dennis Nwabude a prominent member of that community testified on behalf of the Appellants. His testimony was to the effect that the land in dispute belonged to the plaintiffs in suit No. 0/63/61 that is Akanato Umuanya. He enumerated the lands owned by his own people which did not include the land in dispute. He did not claim to have been mandated by his Ezi-Umuanya people to testify for the plaintiffs in suit No. 0/63/61. Nothing in the evidence to explain why Dennis Nwabude would turn against his own people. Significantly too, DW2 who was a defendant in suit No. 0/63/61 testified that other people of Ezi-umuanya were in court when Dennis Nwabude testified in that suit. He had this to say:

"I was one of those that represented the Defendant that is Osile Ogbunike in suit No.0/63/61. In the suit, a person from Ezi-Umuanya gave evidence for the plaintiffs Akanato Ifite Umuanya. His name is Dennis Nwabude. When he came alone. He came with Okwundu Nwakonobi, Abunie Nwakonobi and Rowland Nwabude. These people are the plaintiffs in the present suit."

Dennis Nwabude who was the chief of Ezi umuanya and Akanato (i.e. Akanano Umuanya). At the time he testified he was the head of the Nwabude family of Appellants of Ezi Umuanya and it was the time this present suit was instituted. The evidence of DW2 went unchallenged by the Appellants. DW2 was not cross-examined on this piece of evidence. His evidence was clear and damaging to the case of the Appellants, in respect of awareness of the suit 0/63/61 while it was pending. Despite initial attempts to deny knowledge of the suit, the Appellants eventually through PW5 under cross-examination admitted that they were aware of the said suit as it raged between the Respondents and the Akanato Ifite, Umuanya. The Appellants were fully aware of the pendency of suit 0/63/61. There was evidence that some of the Appellants accompanied him to court when he testified. The Learned trial judge in the instant case regarded the previous suit No.0/63/61 as irrelevant; on the ground that it did not constitute the defence of res judicata. The court below has rightly held that he was wrong in confining his consideration of suit No.0/63/61 to a plea of res judicata. The reason is obvious. The Respondent's herein did not raise the issue res judicata but as estoppel by conduct or estoppel by standing by. It is instructive to note that such a crucial point or averment raised by the Respondents was not specifically

countered by the Appellants in their pleadings which were amended severally.

The court below made a striking contrast between estoppel by conduct or standing by and estoppel per rem judicatam; though the two can arise from the same set of circumstances, are however two distinct defences. Res judicata arises as a matter of record, whilst estoppel by standing by is an equitable doctrine and is essentially a question of fact. The doctrine applies where a person is content to be a spectator, rather than a gladiator, an on looker rather than a player, leisurely waiting for the outcome of the battle or the play, as the case may be. It must be shown that the person knew that his rights or interest were being adversely affected, and yet chose not to do anything about it. The party needs not to be a party in the previous action or qualify as a privy in interest. If he were so res judicata would apply. A non-party therefore could be estopped and thereby be bound by the previous judgment, if he knew or ought to have known the pendency of the previous suit and chose to stand by. Such knowledge is either actual or imputed. See ANYAOKE v. ADI (1986) 3 NWLR (pt.31): BALOGUN v. AGBOOLA (1974) 10 SC.111 at 119. The Appellants in this appeal cannot deny that the suit was pending in the court and yet they remained passive and did not interfere in the action that affected their interest. They are therefore, bound by the outcome of the judgment in suit No. 0/63/61 notwithstanding that they were not party to the suit. See OJIAKO v. OGUEZE (1962) 1 SCNLR 112; ALASE v. OLORI ILU (1964) 1 ALL NWLR 390. It is for the above reason that this issue is resolved in favour of the Respondents.

On issue No. 2, it is submitted by the Learned Counsel for the Appellants that their Lordships of the court below of possession and ownership made by the trial court in favour of the Appellants. That by paragraphs 4, 5, 6, 7, 8, 9, 10, 13 and 14 of the further amended statement of claim, the Appellants pleaded facts dealing with traditional history of the land in dispute as well as acts of ownership and possession thereof. Reliance was further placed on the evidence of PW2, Ezebilo Ekwueme. PW3, Benedict Nwaizu, PW4, Chief Abel Nwangbo, PW5, Alfred Nwaizu, PW7, Rowland Nwabude, PW8, Okolo Afamefuna PW9, Akwuobi Ojike and also DW2, DW3.

On the part of the Respondents, herein their Learned Counsel has submitted that evidence of acts of possession by both parties at the trial court in respect of land in dispute were properly taken into consideration by the court below in arriving at its decision.

For a ground of failure to consider certain issue to succeed the Appellants must show that from the judgment of the court below, the court did not consider or avert its mind to that particular issue. The Appellants are not disputing the fact that the Appellants based their proof of acts of possession on oral evidence neither is it disputed that the 1st-5th Respondents based their proof of acts of possession on documentary evidence namely Exhibits 16, 17 and 18 at the court below. It is instructive to note that the trial court had made certain finding of acts of possession by the Appellants and decided in their favour. On this issue, amongst others, the 1st-5th Respondents appealed and addressed the issue of acts of possession in issue 4 of its Brief which appears at pp.271-272 of the record of Appeal and issue VIII of its supplementary Brief which appears at pp.331-334 of the Record. The Appellants addressed this issue in their issue 4 of their Respondents' Brief and this appears at pp.298-299. The court below considered the nature of evidence provided by the parties. At page 364 in his lead judgment UBAEZONU JCA stated: *"I shall here consider briefly whether the imaginary judicial scale ought to have tilted in favour of the Appellants or Respondents if the evidence led on both side were put on the said scale."*

The above pronouncement is in line with various decisions of this court in respect to the procedure to be adopted where a judgment is attacked for being against the weight of evidence. See GUARDIAN NEWSPAPER LTD v. AJEH (2005) 12 NWLR (pt.938) p.205 at 227. Since the evidence of the appellants was oral evidence while that of the Respondent was documentary evidence for this reason the court below stated at p.365 of the Records thus:

"In a case of this nature where a party relies mainly on oral evidence while the other relies mainly on documentary evidence, the trial court should give more weight to the documentary evidence. This is because oral evidence may tell a lie but documentary evidence which is shown to be genuine does not tell a lie".

The court below stated that the documents tendered by the appellant in that case (herein Respondent) shall be the basis from

which to assess the oral evidence. Consequently guided by this principle, in assessing the oral evidence, the court below made the following findings at p.365 of the Records:

“In Exhibit 16 the people of Ezi-Nkwelle represented by Ekwensi sued the Appellants in respect of a piece of land described by them as “Okpuno” land. The land is north of the Nkissi River. The other boundaries were described in the judgment. The Nsi-Nkwelle people lost to the Appellants. On appeal by the Ezi Nwelle people, their appeal was dismissed as per Exhibit 18. In Exhibit 17 the plaintiffs in that suit are representing the Appellants in this appeal. It was their land case against Ikeji of Nkwelle and Ekwensi of Ezi Nkwelle. Throughout their case the Respondents did nothing to assert their right over the land in dispute.”

After a careful examination and consideration of all evidence presented by both parties, the court below rightly held as follows:- “I have carefully considered all the evidence led in this case as borne out by the various exhibits and I am of the view that if the lower court had properly assessed the evidence, it would have no difficulty in arriving at the conclusion that the weight of evidence was on the Appellants’ side bearing in mind that they claimed nothing.”

It is in the light of the foregoing that I hold firm view that the court below properly considered evidence of acts of possession of both parties and carefully weighed the said evidence that is both the oral evidence of the Appellants and the documentary evidence of the Respondents at the trial court. Where the finding of the court below is borne out by the evidence adduced in the trial court, this court will not intervene or interfere. See IRAGUNIMA v. R.S.H.P.D.A. (2003) 12 NWLR (Pt.834) 427 at 427 at 443. It is in view of the foregoing that I resolve this issue in favour of the Respondents.

The question raised under issue No.3 is whether the court below properly interpreted Exhibits 16, 17 and 18 to come to the conclusion that the exhibits represent parts of the land in dispute. The complaint of the Appellants is that the court below wrongly interpreted Exhibits 16, 17 and 18 which error led the court to hold the said exhibits represent parts of the land in dispute. Relying on the evidence of DW2, learned counsel for the Appellants has contended

that as a star witness through whom Exhibits 16, 17 and 18 were tendered, the witness neither in his evidence in chief nor under cross-examination made any effort to connect the land in dispute with the Exhibits. Learned Counsel for the Respondents however, has pointed out that the interpretation of Exhibits 16, 17 and 18 was based on the contents of the Exhibits, the survey plans, tendered by both parties to confirm the identity of the land in dispute on those cases. Reliance was placed on paragraphs 10, 12, 15(a) and 19 of the Respondents' further-further amended statement of Defence. It is submitted that the court below properly interpreted Exhibits 16, 17 and 18 and thereby came to the conclusion that the exhibits represent parts of the land in dispute. Exhibits 16, 17 and 18 were tendered by the Respondents to show and prove their ownership of lands adjoining the land in dispute. Exhibit 16 was litigation against the Respondents, in respect of the land in dispute. The plaintiffs in that case had sued the respondents for a declaration in respect of "OKPUNO" land. The Respondents indisputably won that case. Upon going through the judgment of the court in that case, the court below had reason to come to the following conclusion at page 358 of the Records:

"The relevance of this judgment is that
(i) The respondent's land, be it the land in dispute or any other land in the area extends northwards beyond the NIKISSI RIVER.
(ii) That their land extends up to Aguleri Road and continues in the northly direction"

Armed with this information and comparing same with survey plans (Exhibits 1, 3 and 8) tendered by both parties the court below held at page 358 of the record thus:

"Exhibits 1, 3 and 8 show, the NIKISSI stream or river. Exhibit 1 is the Respondents' plan while Respondents, Exhibit 3 is the Appellants' plan tendered by the Respondent. Exhibit 8 is the Appellants plan. Exhibit 3 tendered by the Respondent shows road to Aguleri. Thus if one marries Exhibit 16 to Exhibit 1 and 3 the result is that the Appellants not only owns the land south of the Nkissi River. The Road to Aguleri traverses the land in present dispute."

The court below proceeded to examine the other judgments (Exhibits 17 and 18) at page 359 of the Records the Court held -

"The sum total of all these judgments is that successful party may, I say may be the owner of the land in dispute. I may add that

the Appellants in this appeal did not claim anything in the court below. Those judgments could therefore have the effect of weakening the strength of the Respondents' case and point to the fact that the respondents shall not be entitled to the reliefs claimed."

It is in the light of the foregoing findings of the court below that I seem to agree with the Respondents that the interpretation of Exhibits 16, 17 and 18 was based on these exhibits themselves. Their contents are clear and unambiguous. The pleadings of the respondents in their further Amended statement of defence in paragraphs 10, 12, 15(a) and 19, and the survey plans tendered by both parties help tremendously in confirming the identity of the land in dispute in those cases (i.e. Exhibits 16, 17 and 18). I have decided to reproduce paragraphs 10, 12, 15(a) and 19 of the Respondents' further Amended statement of Defence for the better understanding of this issue. The paragraphs read;

"10. The defendants deny paragraph 11 of the further Amended Statement of Claim and will put the plaintiffs to the strictest proof of the allegations therein contained. In further reply thereto, the defendants state that in the High Court Suit No. 3/22- the defendants' people were represented by Maduagwuna who was the defendant in the case, while the plaintiffs of Ezi-Nkwelle were represented by one Ekwensi. The land then in dispute was ATORJI LAND. JUDGMENT was delivered in the said case dismissing the claims of the plaintiff as Ezi-nkwelle. The Atorji land is shown in the defendants' plan and verged YELLOW THEREIN,

12. In further reply to paragraph 12 of the Further Amended statement of claim, the defendants of Osile Ogbunike state that after the case referred to in paragraph 10 above, one Ikeji of Amuche Nkwelle was sued by of Ofochebe of Osile Ogbunike in suit No.8/30 over a piece of land called UGWUELIMILI. The said land is clearly delineated and verged VIOLET in the defendant's plan filed in this suit. Also in the suit, a plan was made for the defendants of Osile Ogbunike showing Atorji land, Ugwuelimili land and the land now in dispute described as "other land of Osile Ogbunike. Judgment in the said suit as also the plan therein will founded upon.

15a . In Ogidi native Court Suit No.11/26, Chief Obiesili of defendants' village, Osile Ogbunike, sued Nwosu of Ogbunike for trespass on Ugwu-Akidi land now in dispute and got judgment. That

suit and judgment will be founded upon.

19. *The defendants of Osile Ogbunike deny paragraph 15 of the Further Amended statement of claim. In further answer thereto the defendants of Osile Ogbunike state that they not only clear the land in dispute, but also their lands namely Atorji.*”

B The testimony of DW2 at page 110 lines 20-26 is as follow:

“The plaintiffs call the land in dispute “Nno-Omo” my people have another land near the land in dispute we call the lands Nkissi Omeagwu, Ataoji, Ugwu Elimili. We inherited the land from our ancestor Ogbunike. My people had cause to go to court to defend our title and the lands I have mentioned. My people won all the cases.”

C **A judgment in a previous case may rightly be used to prove acts of possession.** See OKAFOR & ORS v. OBIWA & ANOR (1978) 9 & 10 SC.115. **One of the modes of proving title is through acts of possession.** See IDUNDUN v. OKUMAGBA (1976) NSCL 445 at 453-455. **Exhibits 16, 17 and 18 being the previous judgments were produced by the respondents at the trial to sustain their claim to ownership and possession of the areas of the land now in dispute.** In the light of the foregoing the
E issue is resolved in favour of the Respondents.

On the whole it is my judgment that this appeal lacks merit. It is dismissed with costs of N50,000.00 in favour of the Respondents but against the Appellants.

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MUKHTAR JSC

This is an appeal against the decision of the court of Appeal, Enugu Division, which set aside the decision of the learned trial Judge
G who gave judgment in favour of the plaintiffs, who are now the appellants. The appeal before this court is predicated on eight grounds of appeal, from which the learned counsel for the appellants distilled eight issues for determination in their brief of argument, and the issues have been extensively treated therein. I will however by way of
H emphasis make some contributions. In the further amended statement of defence of the 1st - 5th defendants, the following was averred:-

“1. Save as is herein expressly admitted, the 1st to the 5th defendants, hereinafter referred to as the defendants of Osile

Ogbunike, deny each and every allegation of fact contained in the Further Amended Statement of Claim as if the same were set out seriatim and traversed specifically and will plead and rely on all legal and equitable defences which may be open to the defendants and in particular:- (a) Estoppel by standing by, (b) Estoppel by conduct, (c) Acquiescence and (d) Admission against interest.” B

With the above averments, the 1st - 5th defendants pleaded defences and supported them with the following pieces of evidence, which proved their defences. D.W.1 testified thus:-

“I was one of those that represented the defendants that is, Osile Ogbunike in the suit. In the suit a person from Ezi Umunya gave evidence for the plaintiffs’ Akanato Ifite Umunya. His name is Dennis Nwabude. Dennis when he came to give evidence did not come alone. He came with Okwundu Nwakonobi, Abunle Nwakonobi, Rowland Nwabudi. These people are the plaintiffs in the present suit.” C D

The witness tendered the various courts proceedings of previous legal actions between the plaintiffs and defendants’ families. By the above reproduced evidence the defendants proved that the subject matter in controversy was prior to this suit a subject of litigation in other suits between the two families. The evidence was not debunked by the plaintiffs. The position of the law is that evidence adduced that is relevant to a matter in controversy that has neither been challenged, nor debunked must be accepted and relied upon by the court. See *Omogegbe v. Lawani* 1980 3 - 4 SC. 108, *Ajao v. Ashiru* 1973 11 S.C. 23 and *Okike v. L.P.D.C.* 2005 15 NWLR part 949 page 471. The defence of estoppel can therefore avail the defendants. First, estoppel by standing. To establish the operation of the doctrine, the following must be established by the defendants:- E F G

“1. A judgment has been given in an action over the same subject matter in which another party has an interest.

2. The other party was quite aware that his rights or interest were adversely affected; and

3. Notwithstanding the knowledge of the suit, the other party folded his arms and did nothing.” H

In this case, the plaintiffs, particularly the 3rd plaintiff who is now the 3rd appellant in this appeal accompanied Dennis Nwabude to court when he gave evidence in the earlier suit No.0/63/61 case.

The fact that he was not mandated or authorized by Ezi Umunya to testify against the interests of his village, or that those who accompanied him to court to give evidence were not mandated by the same Ezi Umunya is immaterial. The fact that he (Dennis Nwabude) gave evidence against the interest of the appellants was enough to establish the fact that he assisted in establishing the respondents' case, very well knowing that his family's interest were being adversely affected. What is more, another Nwabude in the name of Rowland Nwabude, another member of his family was also in court. As a matter of fact he did not only fold his arms in respect of the suit he actively participated in it. The lower court, as per Ubaezonu J.C.A. in his judgment found thus:-

"There is however nothing in the evidence to explain why Dennis Nwabude would turn against his own people. Significantly DW2, who was a defendant in suit no.0/63/61 testified that other people of Ezi Umunya were in court when Dennis Nwabude testified in suit No.0/63/61..."

This evidence went unchallenged by the respondents. DW2 was not cross-examined at all on this piece of evidence, which was very crucial and clearly damaging of the case of the respondents, respecting their awareness of suit 0/63/61 while it was pending. Despite initial attempts to deny their knowledge the respondents eventually through PW5, under cross-examination admitted that they were aware of Suit No.0/63/01 as it raged between appellants and the Akanato Ifite Umunya. The evidence of PW5 on 20/7/92 and 7/10/92 clearly shows that the respondents were fully aware of the pendency of suit 0/63/01...

Where members of a family who are aware of a litigation involving their property wish to be parties to the suit, they ought to apply to be joined. If however they do not so apply, they will be bound by the result of the litigation. See Okpala & Anor vs. Ibeme & Ors (1989) 2 NWLR (pt. 102) 208. Also in Mayorshehu Ibrahim & Anor vs. Dr. Mohammed (1996) 3 NWLR (pt.437) 453. In view of all the facts of this case, I am of the firm view that a case of estoppel by standing by is abundantly made out against the respondents. I subscribe to the above finding of the lower court, which flowed from the evidence. The defendants/respondents relied on the documentary evidence they have tendered. These evidence are strong and

weighty and should have been ascribed probative value, more than the oral evidence, but the learned trial judge thought otherwise and found for the plaintiffs on the more oral evidence they have adduced. The Court of Appeal however gave the evidence the attention they deserved. For the above reasoning and the detailed treatment and reasoning in the lead judgment, I fail to see that the court below erred in arriving at the conclusion it reached. In this wise, I agree with the lead judgment of my learned brother Galadima JSC, which dismissed this appeal. I also dismiss the appeal. I abide by the consequential orders made in the lead judgment.

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NGWUTA JSC

I read in draft the lead judgment just delivered by my Lord, Galadima, JSC. I entirely agree with the reasoning and conclusion in the lead judgment.

There is uncontroverted evidence that Dennis Nwabudu who testified for the plaintiffs (now appellants) in Suit No. 0/53/61 was accompanied to Court by the following people of Umuanya: Okwundu Nwakonobi, Abunie Nwakonobi and Rowland Nwabudu and these people are the plaintiffs in the Suit from which this appeal was filed. The evidence of the DW2 relating to the testimony of Dennis Nwabudu in Suit No.0/63/61 went unchallenged. His evidence is deemed accepted as the truth by the appellants. See *Oludamilola v. The State* (2010) 5 SCM 166. If there is any doubt as to whether the appellants were aware of Suit No.0/63/61, that doubt was cleared by PW5 who admitted under cross-examination that the appellants were aware of the Suit between the respondents and the Akanato Ifite, Umuanya. The equitable doctrine of estoppel by standing-by raised and relied on by the respondents who were grounded in law and fact. For the above and the more comprehensive reasoning in the lead judgment, I agree that the appeal is devoid of merit. Consequently, I also dismiss the appeal. I adopt the order for costs in favour of the respondents for the 1st-5th Respondents.

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