

**SUPREME COURT OF NIGERIA**

6TH JULY, 2012. SC. 36/2003

**CORAM:- A. M. MUKHTAR, C. M. CHUKWUMA-ENEH,  
M. S. MUNTAKA-COOMASSIE, M. U. PETER-ODILI,  
O. ARIWOOLA, JJSC**

DR. SEBASTINE OKECHUKWU MEZU ..... APPELLANT  
AND

1. CO-OPERATIVE & COMMERCE

BANK (NIGERIA) PLC

2. RETMAR INDUSTRIES LIMITED ..... RESPONDENTS

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ACTIONS - Evidence - Admitted facts - Effect - Appellant's earlier position that the property belongs to the company - Stands against his present posture (H1)

ESTOPPEL - Plea - Manner of - Estoppel need not be pleaded in a particular manner - So long as the facts show - That estoppel was clearly raised (H2)

ACTIONS - Estoppel - Application - Since parties and subject matter in earlier suit - Are not different from those of present suit - Appellant is properly stopped from pursuing the appeal (H3)

**FACTS**

Plaintiff/appellant commenced this action at the High Court of Imo State, Owerri seeking inter alia, for a declaration that appellant is the owner of the property known as and called Nos. 6, 8 and 10 Mezu Lane, Owerri. Defendants/respondents position is that appellant was previously the beneficial owner of the said properties until they were sold to 2<sup>nd</sup> respondent by 1<sup>st</sup> respondent due to the failure of appellant to settle his debt. At the trial, appellant testified as PW1 and tendered several documents as exhibits.

At the close of appellant's case, respondents failed to call evidence in their defence. Respondents raised a no case submission and thus relied on the case of appellant. The court in its judgment, held that an earlier suit No. HOW/201/93 operated as res judicata against appellant. It therefore dismissed the action filed by appellant.

Dissatisfied, appellant filed appeal at the Court of Appeal, Port Harcourt Division. The court heard and dismissed the appeal. Aggrieved further, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

1. Whether the Appellant established that he mortgaged only his property covered by deed of conveyance registered as No. 48 at page 48 in Volume 806 of the Lands Registry Enugu now Owerri to the 1st Defendant/Respondent.

2. Whether the court of Appeal had before it evidence on which to allow the appeal and grant the declaratory and injunctive reliefs sought by the Appellant.

3. Whether suit No HOW/201/203 operates as res judicata against the Appellant.

4. Whether this suit constitutes an abuse of the process of Court.

5. Whether the Learned Justices of the Court of Appeal were right when they held that the Appellant is stopped from asserting that he owns the properties in dispute.

**HELD** (Unanimously dismissing the appeal per **PE-TER-ODILI JSC**)

*Evidence - Admitted facts - Effect*

**1. The principle above was followed by this Court in Coker v Sanyaolu (1976) 96 SC 208 and in the instance of the present appeal, the present Appellant as plaintiff at Court of trial has not established that he as a human person is the owner of the property referred to as Plots 6, 8 and 10 Mezu Lane. Rather, his earlier position in the case of Mezu International Co Ltd as plaintiff, No HOW/201/93 he had held out that the said property belonged to that corporate body and that statement made on oath stands against his present posturing since it was an admission. (p. 2843 B)**

*ESTOPPEL - Plea - Manner of*

**2. From the foregoing, it is clear that the learned trial Judge was right to hold that estoppel did not need to be pleaded in**

**any particular manner so long as the facts can be seen and interpreted that estoppel was well and clearly raised.**

(p. 2847 G)

*Estoppel - Application*

**3. This has been spoken as it is, which is that the veil of incorporation had been lifted by no less than the Appellant himself who clever by half had fallen into a trap he set against his opponent. The Appellant is not only privy and Chief executive officer of the Company, he is also the alter ego, the face and body of the company, one and the same and cannot now want to extricate himself from who he had made himself to be. In that regard therefore I am not impressed with the argument of the learned counsel for the Appellant that the parties and subject matter in the present suit; are different from those in the suit earlier in time. Appellant is properly stopped from pursuing the suit and appeal, which are glaringly abusive of the Court's processes.** (p. 2848 B)

## NOTABLE POINTS OF INTEREST

### **CHUKWUMA-ENEH JSC**

#### ***1. When defence can raise a no case submission***

I affirm the foregoing abstract of the defense submission in this matter as the correct state of the law as some of the grounds upon which the defense may take up the gauntlet to challenge the plaintiffs case in a no-case submission. I must however add that the defense has also the right to raise a plea of no-case to answer where the plaintiff's case has been so discredited in cross-examination as to render his case inadequate and most unreliable in the circumstances that no reasonable tribunal will act on it. I add that the defense has the right to so urge at the close of the plaintiffs case and the parties may then proceed to make their final addresses i.e. from both sides.

(p. 2852 G)

#### ***2. Occasions to lift the veil of corporate entity***

Although the separate legal entity of the company is sacrosanct, there are occasions when the law will allow lifting the veil of corporate en-

tity and these occasions are set under the Companies and Allied Matters Act i.e. CAMA. I need not go into them here. One of such occasions is as here when it is necessary to disregard the doctrine of separate legal entity from the founders of a company as where the founders are hiding under the cloak of separate corporate entity of a company  
 B in perpetuating frauds as in this matter. (p. 2855 A)

**REPRESENTATION**

L. A. Njemanze, SAN, with A. I. Ariche (Mrs.), for the Appellant  
 C Chief O. Ugolo SAN, with Chidinma Ibemesi, for the 1st Respondent  
 Chris Nneji Esq, with Elezianyia Okechukwu, for the 2nd Respondent

**CASES REFERRED TO**

D Olorunfemi v. Asho (1999) 1 NWLR (pt. 585) 1  
 Adelaja v. Alade (1999) 5 NWLR (pt. 608) 545  
 Iyase v. Omoragbon (1976) 9-10 SC 165  
 Ododhe v. Okinjeni (1973) 11 SC 343  
 Augusto v. Joshua (No.1) 1962 1 All NLR 312  
 E Idika v. Erisi (1988) 2 NWLR (Pt.78) 568  
 Daniel Holdings Ltd v. UBA Plc (2005) 13 NWLR (pt. 943) 533  
 Nigerian Advertising Services Ltd v. UBA Plc (2005) 14 NWLR (pt. 945) 421  
 F Amawo v A.G. Northern Nigeria (1973) 6 SC 47  
 Ojiakor v Ewuru (1995) 9 NWLR (pt. 420) 46  
 Olukoga v Fatunde (1996) 7 NWLR (pt. 462) 516  
 Remi v. Sunday (1999) 8 NWIR (pt. 513) 92  
 Coker v Sanyaolu (1976) 9 10 SC 203  
 G Ekpoke v Usilo (1978) 6-7 SC 187  
 Ibenye v Agwu (1998) 1 NWLR (pt. 574) 372

**STATUTES REFERRED TO**

Companies and Allied Matters Act  
 H

**LEAD JUDGMENT BY PETER-ODILI JSC**

The Appellant commenced this action at the Imo State High Court, Owerri Judicial Division seeking the following reliefs:-  
 (i) A declaration that the plaintiff is the owner of the property

known as and called Nos. 6, 8 and 10 Mezu Lane, Owerri and which is situate at the pieces or parcels of land known as and called “UHU-UMUOYIMA” and which are variously registered as instruments Nos.48/48/806, 6/6/889 in the office at Enugu but now at Owerri.

(ii) A declaration that the Plaintiff mortgaged only the property covered by instrument No. 48/48/806 to the 1st Defendant. B

(iii) A declaration that the 1st Defendant has no right to sell the properties of the plaintiff to the 2nd Defendant in order to realize the debt owed to the 1st Defendant by the company Mezu International Limited.

(iv) N5,000,000.00 (Five Million Naira) being general damages for trespass. C

(v) An injunction restraining the Defendants from entering into and taking possession of the property of the plaintiff.

**FACTS BRIEFLY STATED:**

At the trial Court, Appellant filed his statement of claim and thereafter the Defendants filed separate statements of defence (pages 1 - 13 of the main record of appeal). It is noteworthy that the 2nd Defendant's Statement of defence is a repletion of the 1st Defendant's Statement of Defence. The case of the Plaintiff/Appellant is that he is the owner of the properties known as and called Nos. 6, 8 and 10 Mezu Lane Owerri; which properties are contiguous. The said piece or parcels of land were formerly known and called “Uhu-Umuoyima” and the plaintiff /appellant purchased these contiguous pieces of land piece meal vide deeds of conveyance registered as 7/7/889, 6/6/889 and 48/48/806 at the Lands Registry Enugu now Owerri. These instruments have survey Plans annexed to them delineating the particular piece or parcel of land covered by each instrument. By a deed of mortgage dated 5/2/76 and registered as 22/22/874 at the lands Registry Enugu now Owerri the appellant mortgaged only the portion of Uhu-Umuoyima covered by deed of conveyance dated 31/12/74 and registered as 48/48/806 of the Lands Registry Enugu now Owerri to the 1st Defendant/Respondent to secure a loan, and not the entire Uhu-Umuoyima land. That the appellant is not indebted to the 1st Defendant rather Mezu International Limited is indebted to the 1st Defendant/Respondent. That though Mezu International Limited is not the owner of the pieces or parcels of land known as and called Uhu-Umuoyima the 1st Defendant purportedly sold the whole D  
E  
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H

pieces or parcels of land called Uhu-Umuoyima to the 2nd Defendant in purported exercise of its power of sale under the aforesaid deed of mortgage between the Plaintiff and the 1st Defendant. It is noteworthy that Mezu International is not a party to the said deed of mortgage and has no proprietary interest in and over the said Uhu-  
 B Umuoyima land.

It is also noteworthy that appellant did not mortgage the pieces of land covered by the said instruments registered as 6/6/889 and 7/7/889. The case of the Defendants is that the Appellant was previously the beneficial owner of the said properties until they were sold  
 C to the 2nd Defendant by the 1st Defendant due to the failure of the Appellant to settle his debt despite repeated demands by the 1st Defendant. That until the Appellant commenced this Suit the Appellant had represented that properties Nos. 6, 8 and 10 Mezu Lane  
 D Owerri were mortgaged to the 1st Defendant. The Defendants relied on the pleadings and processes in Suit No: HOW/201/93. It is noteworthy that in paragraph 5 of the Statements of Defence the Defendants admitted that the appellant by the said deed of mortgage the  
 E appellant mortgaged the land measuring approximately 907.806 square Metres and covered by instrument registered as 48/48/806 of the Lands Registry Enugu. The Appellant at the trial in the High Court testified as PW1 and gave evidence in line with his pleadings and  
 F tendered various documents which were admitted in evidence as exhibits (pages 13-23 of the main record). The documents tendered by PW1 include the following:-

EXHIBIT 'A' - Instrument registered as No.6 page 6 Volume 889.

EXHIBIT 'B' - Instrument registered as No.7 page 7 Volume  
 G 889.

EXHIBIT 'C' - Instrument registered as No.486 page 48 Volume 806.

EXHIBIT 'F' - Deed of mortgage registered as No.22 page 22 Volume 884.

H The PW1 maintained that not the entire Uhu-Umuoyima land was mortgaged to the 1st Defendant, that he only mortgaged the property registered as No, 48 at page 48 in Volume 806 of the Lands Registry by deed of mortgage registered as No. 22 at page 22 in Volume 874 of the Lands Registry. When for medical reasons the

Plaintiff traveled to U.S.A and could not attend court, defence counsel applied to the trial Court to close that case for the Plaintiff. The trial court granted the application and called on the Defendant to open their defence. The Defence counsel informed the trial court that the Defendants will not call evidence but will rather close their cases and rely on the case of the Plaintiff. The trial court then adjourned the matter for judgment. B

Before the trial judge delivered his judgment, the Plaintiff filed an application praying for an order arresting the judgment fixed to be delivered on 12/1/98 and an order re-opening the case of the Plaintiff and allowing the plaintiff call further evidence. The motion was supported by an affidavit of twenty-seven (27) paragraphs and medical paper from the Plaintiff's medical doctor confirming that due to ill health the plaintiff could not travel back to Nigeria was annexed thereto as exhibit. The defendants did not file any counter affidavit. D The said motion was moved and argued by counsel. In his ruling, the trial court dismissed the said motion. And then proceeded to deliver his judgment and dismissed the action filed by the plaintiff. Dissatisfied with the said judgment, the Plaintiff appealed against same. The notice of appeal filed by the plaintiff contains seven (7) grounds of appeal. At the Court of Appeal, the parties filed and exchanged briefs of argument. The Court of Appeal Port Harcourt Division heard the appeal and in a unanimous decision dismissed the appeal. The Appellant with the leave of the Supreme Court has now appealed against the decision of the Court of Appeal. The notice of appeal which contains six (6) grounds of appeal is at pages 190 to 196 of the record of appeal. E F

The date of hearing was 17/4/12 on which the Appellant through learned counsel adopted their Brief settled by Ken C. O. Njemanze filed on 9/5/06 in which were formulated five issues for determination which are as follows:- G

1. Whether the Appellant established that he mortgaged only his property covered by deed of conveyance registered as No. 48 at page 48 in Volume 806 of the Lands Registry Enugu now Owerri to the 1st Defendant/Respondent. H

2. Whether the court of Appeal had before it evidence on which to allow the appeal and grant the declaratory and injunctive reliefs sought by the Appellant.

3. Whether suit No HOW/201/203 operates as res judicata against the Appellant.

4. Whether this suit constitutes an abuse of the process of Court.

5. Whether the Learned Justices of the Court of Appeal were right when they held that the Appellant is stopped from asserting that he owns the properties in dispute.

The 1st Respondent in a Brief of argument settled by Chief Okechukwu Ugolo SAN and filed on 11/11/07 distilled four issues for determination, viz:-

(i) Whether the Appellant proved that he is the owner of Plots 6, 8 and 10 Mezu Lane, Owerri.

(ii) Whether suit No. How.201/93 operates as res judicata against the Appellant.

(iii) Whether this suit constitutes an abuse of process of court.

(iv) Whether the Learned Justices of the Court of Appeal were right when they held that the appellant is stopped from asserting that he owns the properties in dispute.

Learned counsel for the 1st Respondent adopted the Brief and relied on the arguments therein. Learned counsel for the Appellant adopted their Reply Brief filed on 14/12/11. The issues as framed by the Appellants being more apt I adopt them for the determination of this appeal.

#### ISSUES 1 AND 2:

Whether the Appellant established that he mortgaged only his property covered by the Deed of-Conveyance registered as No. 48 at page 48 in volume 806 of the Lands Registry Enugu now Owerri to the 1st Defendant/Respondent.

Whether the Court of Appeal had before it evidence on which to allow the appeal and grant the declaratory and injunctive reliefs sought by the Appellant.

Mr. Njemanze, SAN in arguing along the line of the Appellants' Brief made a recast though briefly of the evidence proffered by the appellant as plaintiff and his witnesses. That at the end of the plaintiff's testimony when Defence was called upon to defend, the learned defence counsel at the court of trial informed the court that the defence was relying on the case of the plaintiff and did not intend to call evidence and thereafter closed the case of the defence. Learned



Senior Counsel said it is settled law that where a defendant rests his case on that of the plaintiff, the defendant is bound by the evidence called in support of the case of the plaintiff and the case must be dealt with on the evidence as it stands. That as the evidence stands the plaintiff is the owner of the property subject matter of the suit as plaintiff mortgaged only part of the Uhu-Umuoyima to the 1st defendant as shown by Exhibit F. That the plaintiff is not indebted to the 1st defendant who had no right to sell the plaintiff's property and the plaintiff did not assign the property in dispute to Mezu International Limited. He cited *Toriola v Walters* (1932) 7 SC 27 at 33; *Ekpanya v. Akpan* (1989) 2 NWLR (pt.101) 86; *Oikherhe v. Inwanfero* (1997) 7 NWLR (Pt.512) 226; *Okupe v. Ifemenbi* (1974) SC 97; *DPMS Ltd v Larine* (2000) 5 NWLR (Pt.655) 138 at 150. B C

Senior Counsel for the Appellant said averments in pleadings is not tantamount to evidence and so where no evidence is led in support of the averments as has happened in this case, then those averments are taken as abandoned. He cited many cases in support such as *Idesoh v Ordia* (1997) 3 NWLR (Pt.491) 17; *Odebunmi v. Abdullahi* (1997) 2 NWLR (Pt.489) 526; *Federal College of Education v. Anyanwu* (1997) 4 NWLR (Pt.501) 533 etc. Chief Ugolo, SAN for the 1st Respondent contended that where a defence counsel rests his case on that of the plaintiff what it means in effect is:- D E

(a) that the plaintiff has not made out any case for the defendant to answer, or

(b) that the defendant admits the facts of the case as stated by the plaintiff, or F

(c) that in the alternative that the defendant has a complete answer in law to the plaintiff's case (see *Ofomaja v Commissioner of Education & Ors* (1995) 8 NWLR (Pt.411) 69 at 81. G

The learned counsel for the 1st Respondent went on to say that when the 1st Respondent rested his case on that of the plaintiff in this suit he was in fact stating that the plaintiff did not make out any case for the 1st respondent and has a complete answer in law to that appellant's case. That it is so since the appellant's case totally collapsed on cross-examination by counsel for the 1st respondent example being the matter of the appellant's affidavit deposed on 11/6/93 in Suit No. HOW/201/93 in which appellant stated that Mezu International Limited is the owner of plots 6, 8 and 10 Mezu Lane, H

Owerri tendered as Exhibit 'G' without objection by plaintiff/appellant's counsel. That this deposition brought in under cross-examination countered appellant's claim that the Plots 6, 8 and 10 Mezu Lane, Owerri belonged to appellant, Dr. Okechukwu Mezu. Also, a judgment along the lines of that Affidavit deposition brought in under  
 B further cross-examination. He cited *Ezewusim v Okoro* (1993) 5 NWLR (Pt.294) 478 at 493; *Iga v Amakiri* (1976) 11 SC 1 at 11. To answer the question raised herein as to the effect or implication of the defence resting its case on the plaintiff at the trial Court, it seems  
 C to me that this court needs go back to the facts and evidence proffered by the Plaintiff. In that regard I shall quote totally the affidavit evidence deposed to by Dr. Sebastian Okechukwu Mezu, Plaintiff/Appellant herein. In the process earlier in time in which he made the deposition, Exhibit 'G' at the Court of trial, he did so as Chief executive officer of Mezu International Co Ltd. It is as follows and found at  
 D 88 - 90 of the Record of this appeal.

*"IN THE HIGH COURT OF IMO STATE OF NIGERIA  
 IN THE HIGH COURT OF OWERRI JUDICIAL DIVISION  
 HOLDEN AT OWERRI  
 E SUIT NO. HOW.201/88  
 BETWEEN:  
 MEZU INTERNATIONAL LIMITED - PLAINTIFF/ APPELLANT  
 AND  
 1. CO-OPERATIVE & COMMERCE  
 F BANK (NIGERIA) PLC - DEFENDANTS/RESPONDENTS  
 2. NAKES O. OBIAKOR  
 AFFIDAVIT IN SUPPORT OF MOTION FOR INTERLOCUTORY INJUNCTION*

*I, DR. SEBASTIAN OKECHUKWU MEZU Nigerian citizen, Christian and Company Director, residing at MEZU VILLE Emekuku Owerri Imo State of Nigeria do hereby make oath and state as follows:-*

- 1. That I am the Managing Director and chief Executive of  
 H MEZU INTERNATIONAL LIMITED who is the Plaintiff/Appellant in the above stated suit*
- 2. That I have the consent and authority of the said Plaintiff/Applicant to swear to this oath on its behalf.*
- 3. That the plaintiff /applicant is the owner of the properties*

*known as and called Nos. 6, 8 and 10 Mezu Lane Owerri.*

4. *That the said properties known as and called Nos. 6, 8 and 10 Mezu Lane Owerri are where the plaintiff /applicant carries on its business.*

5. *That on Monday 17th day of May, 1993 I read from page 15 of "THE STATESMAN, Newspaper of 17th May, 1993 an advertisement stating that the 1st defendant/respondent has authorized the 2nd defendant/respondent to sell by Public auction the said properties of the plaintiff /applicant. A copy of the said "THE STATESMAN" Newspaper publication is hereby exhibited and marked as EXHIBIT "A".*

6. *That when I went to my office at the said No. 5 Mezu Land Owerri I was informed by some of the workers and I verily believed them that the said 2nd defendant/respondent came to the said property earlier that morning and said that he had sold the said property.*

7. *That I then consulted a Solicitor B.A. Njemanze Esq who informed me and I verily believed him that the purported sale of the said properties was wrong in that it did not comply with the provisions of the AUCTIONEERS LAW CAP 12 of the 1963 LAWS OF EASTERN NIGERIA.*

8. *That the Plaintiff/applicant has instituted an action against the defendants/respondents claiming as follows:-*

(a) *"A declaration that the purported sale of the plaintiff's property known as and called UHU-UMUOYIMA at Owerri and otherwise called and known as Nos. 6, 8 and 10 Mezu Lane Owerri by the defendants by a purported Public Auction sale on 17th day of May, 1993 is NULL AND VOID and of no effect whatsoever."*

(b) *"An order of INJUNCTION restraining -the defendants, their servants, agents or anybody whatsoever acting on the said purported sale from entering upon the said property of doing anything which is against the proprietary right of the plaintiff over the said property.*

9. *That the defendants/respondents are now threatening to eject the plaintiff/applicant forcefully from the said properties.*

10. *That the plaintiff/applicant will suffer untold hardship and irreparable loss if the defendants/respondents are not restrained by the Court from ejecting the plaintiff/applicant from the said properties.*

11. *That before the said purported sale of the properties the plaintiff/applicant had started to liquidate its indebtedness to the 1st defendant/respondent.*

12. *That the 1st defendant/respondent wrote a letter Reference No.CCB/AC/OW.815/283 of 11/5/93 acknowledging the receipt of the payments which the plaintiff /applicant made in part liquidation of the debt. A copy of the...*

13. *That I undertake to enter into a bond to pay damages if this application is granted and it later turned out that the claim is frivolous.*

14. *That I make this oath honestly believing the contents to the best of my knowledge and information to be true and correct and in accordance with the Oaths Act of 1963.*  
(signed)

D Deponent

**DR. SEBASTIAN OKECHUKWU MEZU"**

The averments are self explanatory and brought in when the Appellant was cross-examined by the defence counsel at the Court of first instance. Initially he denied swearing to that affidavit and that he had not given evidence in the Court in Suit No. HOW/201/93 but the signature was his. He had also in examination in chief admitted that his personal account was merged with the account of Mezu International and it was the only account he had with the bank. In paragraph 5 of the Statement of Claim in the said earlier suit HOW/201/93 and tendered in the trial court basis of this appeal as Exhibit G1, it was averred as follows:-

*"The Plaintiff (that is Mezu International) is the owner of the properties known as 'UHU-UMUOYIMA" or, No. 6, 8 and 10 Mezu Lane Owerri, Imo State."*

These glaring facts elicited in the cross-examination of Appellant as PW1 within the case of the plaintiff at the Court of first instance really made it unnecessary for the defence to do anything else by way of evidence for the defence since their path had been well cut out for them by the Appellant under cross-examination. In other words, it can be taken that the plaintiff had unwittingly effectively solved the problem for the defendant. It is for that reason that the Court of trial and affirmed by the Court of Appeal stated that the Appellant herein was one and the same as Mezu International Co.

Ltd. The same person crafting and executing all the deals of the company while hoping to hide under the disguise of the corporate existence of a Company Limited being different and separate from the promoters and offers of the company. The situation on ground is akin to where the Lord Justice Russell in *Jones v Lipman* (1952) 1 LR 832 when he held thus:- B

*“A devise and a sham, a mask which he holds before his face in an attempt to avoid recognition by the eyes of equity.”*

***The principle above was followed by this Court in Coker v Sanyaolu (1976) 96 SC 208 and in the instance of the present appeal, the present Appellant as plaintiff at Court of trial has not established that he as a human person is the owner of the property referred to as Plots 6, 8 and 10 Mezu Lane. Rather, his earlier position in the case of Mezu International Co Ltd as plaintiff, No HOW/201/93 he had held out that the said property belonged to that corporate body and that statement made on oath stands against his present posturing since it was an admission.*** See *Iga v Amakiri* (1976) 11 SC 1 at 11. Furthermore, he had without doubt given to his adversary facts favourable to the Respondents and thereby weakened and demolished his own case. I refer to the case of *Ezewusim v Okoro* (1993) 5 NWLR (Pt.294) 478 at 493. The answer here in this issues 1 & 2 is predictably in favour of the Respondents and against the Appellant. C D E

ISSUES 3 AND 4:

Whether Suit No. HOW/201/93 operates as res judicata against the Appellant? F

Whether this Suit constitutes an abuse of the process of Court?

For the Appellant was posited that res judicata being a plea should be raised in the pleadings and the pleadings should contain the essential ingredients of the plea that bars the plaintiff from re-litigating a particular case. That the Respondent did not plead, estoppel per rem judicatam and since parties are bound by their pleadings and the court cannot make a case different from what the parties pleaded and so the trial Court was wrong to have held that Suit No HOW/201/93 operated as res judicata against the Appellant. He cited *Amawo v A.G. Northern Nigeria* (1973) 6 SC 47 at 54; *Ojiakor v Ewuru* (1995) 9 NWLR (Pt.420) 46; *Olukoga v Fatunde* (1996) 7 NWLR (Pt.462) 516; *Remi v. Sunday* (1999) 8 NWIR (Pt.513) 92 at G H

**2844** Mezu v. Co-operative & Commerce Bank (2012) 7 KLR Peter-Odili JSC  
 106; *Fadora v Gbadebo* (1978) 3 SC 219; *Coker v Sanyaolu* (1976) 9 10 SC 203; *Ekpoke v Usilo* (1978) 6-7 SC 187; *Ibenye v Agwu* (1998) 1 NWLR (Pt.574) 372; *Agbasi v. Obi* (1998) 2 NWLR (Pt.535) 1. Mr. Njemanze, SAN stated on for the Appellant and said, assuming without conceding that the Respondents pleaded estoppel per rem  
 B *judicatam* whether bearing in mind the principles of law above stated if it has been established that Suit No. HOW/201/93 operated as *res*  
 C *judicata* against the Appellant. He said so based on the fact that parties in Suit No. HOW/201/93 are Mezu International Limited Co-operative and Commerce Bank (Nigeria) Plc against Nakes O. Ojiakor while the present Suit had Dr. Sebastian Okechukwu Mezu as Plain-  
 D tiff. That by virtue of Section 37 of the Companies and Allied Matters Act Cap 59 L.F.N. 1990 from the date of registration of Mezu International Limited it became a body corporate with separate and distinct  
 E personality from anyone of its subscribers, shareholders and officers and directors. That Mezu International Limited and the Appellant are two separate, different and distinct persons in law, although the Appellant is a director of Mezu International Limited. He referred to *Ramanchandani v Ekpenyong* (1975) 5 SC 29; *Marina Nominees*  
 F *Ltd v F.B.I.R.* (1985) 2 NWLR (Pt.20) 48; *Lee v Lee's Air Farming Ltd* (1961) AC 12; *Gomer Modern Company Law* (3rd Edition) 2002. Senior Counsel, Ken Njemanze said Appellant was not a party in Suit No. HOW/201/93 and is not privy to any of the parties in the  
 G said Suit. That no final decision of a court of competent jurisdiction was pronounced in any suit between the Appellant and respondents before the filing of this action. That Suit NO. HOW/201/93 cannot operate as estoppel per rem *judicatam* in the resent action because the parties are different. He referred to *Ofem v Ejukwa* (1994) 2  
 NWLR (Pt.303) 315. That the burden of proof of *res judicata* rests on the Respondents but they failed to establish that the Appellant is a party in HOW/201/93 and the issues in the two cases are the same. *Njoku v Dikibo* (1999) 1 NWLR (pt.534) 496. Also, that the fact of the two different capacities will preclude the doctrine from operating.  
 H See *Balogun v Shonibare* (1977) 3 NWLR (Pt.493) 317; *CBN v Ahmed* (2001) 11 NWLR (Pt.724) 369. That this action is not an abuse of Court process. He cited *Okafor v A.G. Anambra State* (1991) 6 NWLR (Pt.200) 659.

Chief Ugolo, SAN for the 1st Respondent submitted that issue

No.3 is not related to Ground 3 of the Grounds of Appeal as that Ground did not deal with whether Suit No. HOW/201/93 operated as res judicata. That where an issue for determination does not emanate from the grounds of appeal it becomes irrelevant and arguments canvassed in support of it will accordingly be struck out for want of competence. He cited *Oyede v Olusesi* (2005) 10 NWLR (Pt.951) 341 at 362 to 253; *Olorunfemi v Nigerian Educational Bank Limited* (2003) 5 NWLR (Pt.812) 1 at 19. That if Issue No.3 is struck out, since it is argued with Issue No. 4 then both arguments should be struck out.

Learned counsel for the 1st Respondent after recanting the facts and the 1st Respondent's pleadings which showed that the estoppel was pleaded and so res judicata was properly raised. That the trial judge was right in holding that estoppel need not be pleaded in any special form provided the facts are present which can be interpreted as constituting it are stated in such a way that estoppel is raised. He cited *Benedict O. Nwoti v. T. O. C. Mbonu* (1991) 3 NWLR (Pt.206) 737 at 747. That Appellant is the alter ego of the company because when the veil of incorporation is lifted it will reveal that the Appellant is the physical person and is masquerading as the company. That this lifting is usually done in the fact of improper conduct or fraud as in the present case. He referred to *Gilford Motor Company v Home* (1933) Ch 935. Chief Ugolo, SAN said from the facts, the subject matter, issues and the parties were the same and therefore a perfect setting for the application of estoppel per rem judicatam.

In arguing these two issues 3 and 4, learned counsel for the Respondent had referred to them, even in his Brief of Argument as Notice of Preliminary Objection on the basis that the Ground 3 of the Grounds of Appeal upon which issue 3 is based does not deal with whether Suit No. HOW/201/93 operates as res judicata. That the issue which did not arise from the grounds of appeal should be struck out for incompetence. This objection at this point and raised as it has been seem a little strange to me with complicating consequences and I would prefer to strike it out so I can see my way through the proper argument on the issue of estoppel properly raised both in the judgments of the Courts below and in this appeal,

I hereby strike out the Preliminary Objection herein so called. Going into the main argument in Issues 3 and 4, I shall re-cast the

salient parts of the Statement of Claim in 1993, Mezu International Limited as Plaintiff instituted Suit No. HOW.201/93 against the 1st Respondent and Nakes O. Obiakor the 1st Respondent's Auctioneer who sold the Plots Nos. 6, 8 and 10 Mezu Lane, Owerri by Public Auction. I would capture those areas in the Statement of Claim as follows:-

*"The Owerri High Court entered judgment in Suit No. HOW/201/93 for the Plaintiff, Mezu International Limited as follows:*

*"(a) The purported sale of the plaintiff property known as and called "UHU-UMUOYIMA" at Owerri and otherwise known as and called Nos. 6, 8 and 10 Mezu Lane, Owerri by the Defendants by a purported public auction sale on 17th May, 1993 is null and void and of no effect whatsoever.*

*(b) The Defendants by themselves, their servants, agents or anybody whatsoever acting on the purported sale are hereby restrained from entering upon the said property or doing anything which is against the proprietary right and interest of the plaintiff over the sold property."* (Exhibit G3 pages 98-99 of the Records).

As stated in paragraphs 4 and 6 (supra) when Mezu International Limited failed to liquidate its debt of over three-million naira to the 1st Respondent, the latter sold Nos. 6, 8 and 10 Mezu Lane, Owerri to the 2nd Respondent. Appellant who represented Mezu International Limited in Suit No. HOW/201/93 filed the present Suit No. HOW/449/94 and claimed, inter alia, as follows in paragraph 15 (a) of his Statement of Claim.

*"A declaration that the plaintiff, (i.e. Dr. S. Okechukwu Mezu) is the owner of the property known as and called Nos. 6, 8 and 10 Mezu Lane, Owerri and which situate at the pieces or parcels of land known as and called "UHU UMUOYIMA" and which are variously registered as instruments Nos. 48/48/806, 6/6/889 and 7/7/889 in the office at Enugu but now at Owerri, .*

*The 1st Respondent in paragraph 5 of the Statement of Defence Denied paragraphs 5, 7, 8 and 9 of the Statement of Claim and further stated inter alia:-*

*"Further, until this suit was filed plaintiff had represented and admitted that all the aforesaid properties ie. Nos. 5, 8 and 10 Mezu Lane, Owerri were mortgaged to the 1st Defendant (ie. 1st Respondent). Defendants specifically plead as follows:-*



(a) *The statement of claim dated 14/6/93 filed in suit No.HOW/201/93 particularly paragraphs 5 and 6 thereof.*

*Paragraph 14:-*

(a) *"A declaration that the purported sale of the Plaintiff's property known as and called 'UHU UMUOYIMA' at Owerri and otherwise known as and called Nos. 6, 8 and 10 Mezu Lane, Owerri by the Defendants by a purported Public Auction Sale on 17th May, 1993 is NULL AND VOID and of no effect whatsoever."*

(b) *An order of INJUNCTION restraining the Defendants, their servants, agents or anybody whatsoever acting on the said purported sale from entering upon the said property or doing anything which is against the proprietary right and interest of the Plaintiff over the said property."*

Appellant, Dr. Sebastian Okechukwu Mezu represented Mezu International Limited throughout the proceedings and on 11th June, 1993 he swore to an affidavit in support of Motion for interlocutory Injunction and stated as follows in paragraph 1:

*"That I am the Managing Director and Chief Executive of Mezu International Limited who is the Plaintiff/Applicant in the above stated Suit."*

In paragraph 3 of the same affidavit he deposed as follows:-

*"That the Plaintiff/Applicant is the owner of the properties known as and called No. 6, 8 and 10 Mezu Lane, Owerri."*

*Counter-affidavit on 15/7/93 by 1st Defendant in Suit No. HOW/201/93. 1st Defendant's Statement of Defence in said suit dated 6/8/93. Plaintiff's Counter-affidavit filed on 6/9/93 in said Suit. Judgment in Suit No.HOW/201/93 will be founded upon at the trial. (Added by Amendment made by 1st Respondent's Counsel on 6/5/96. Throughout the proceedings, Plaintiff never raised the issue that the property. No.6 Mezu Lane, was not amongst the mortgaged properties. Plaintiff is thereby stopped and is guilty of acquiescence."*

***From the foregoing, it is clear that the learned trial Judge was right to hold that estoppel did not need to be pleaded in any particular manner so long as the facts can be seen and interpreted that estoppel was well and clearly raised.*** This, the Court of Appeal per Pats -Acholonu JCA (as he then was) found when he said:-

*"Having held out to the world that the property is that of Mezu*

*International he shall be stopped by the court to turn around to say that he owns the property. In other words he sang his swan song by standing by and encouraging and fully supporting a cause that is manifestly against his interest... This ungainly and unbecoming acquisitive act of the appellant spurred on by intention that the debt to the Bank be indirectly extinguished is condemnable. This mania to reap double ration is to say the least culling...*

***This has been spoken as it is, which is that the veil of incorporation had been lifted by no less than the Appellant himself who clever by half had fallen into a trap he set against his opponent. The Appellant is not only privy and Chief executive officer of the Company, he is also the alter ego, the face and body of the company, one and the same and cannot now want to extricate himself from who he had made himself to be. In that regard therefore I am not impressed with the argument of the learned counsel for the Appellant that the parties and subject matter in the present suit; are different from those in the suit earlier in time. Appellant is properly stopped from pursuing the suit and appeal, which are glaringly abusive of the Court's processes.*** I place reliance on Coker v Sanyaolu (1976) 9 10 SC 203 per Idigbe JSC; Gilford Motor Company v Horne (1933) Ch. 193.

#### ISSUE 5:

Whether the Learned Justices of the Court of Appeal were right when they held that the Appellant is stopped from asserting that he owns the properties in dispute.

Learned counsel for the Appellant referred to paragraph 4 of Appellant's statement of claims in which he said he is the owner in possession of the properties in dispute by virtue of the aforesaid three separate and distinct deeds of conveyance. That Respondents in paragraph 3 of their respective Statements of defence admitted that the Appellant is the beneficial owner of the properties until the 1st Respondent sold the properties to the 2nd Respondent. That Respondents did not aver in their Statement of Defence that Appellant was stopped from asserting that he owns the properties in dispute. Also, that it is not the case of the Respondents that Mezu International Limited owned the properties in dispute. That parties are bound by their pleadings and issues joined which are to be adjudicated by the

Court. He cited *Olorunfemi v Asho* (1999) 1 NWLR (Pt.585) 1 at 9 & 11; *Adelaja v Alade* (1999) 5 NWLR (pt.608) 545 at 562; *Iyase v Omoragbon* (1976) 9 - 10 SC 165 at 169; etc. Mr. Njemanze SAN went on to submit that estoppel must be pleaded and supported by the necessary evidence and failing which as in this case the respondent are stopped by using estoppels as anchor. He cited *Owoniye v Omotosho* (1961) 1 All NLR 304 at 307; *Ododhe v Okinjeni* (1973) 11 SC 343 at 353; *Augusto v Joshua* (No.1) 1962 1 All NLR 312 at 318; *Idika v Erisi* (1988) 2 NWLR (Pt.78) 568 etc. Chief Ugolo SAN for the 1st Respondent said the Appellant has not shown anything upon which the concurrent findings of the two Courts below should be upset or disturbed. He cited *Solola v State* (2005) 2 NWLR (Pt.937) 460 at 488; *Daniel Holdings Limited v UBA Plc* (2005) 13 NWLR (Pt.943) 533 at 546; *Nigerian Advertising Services Limited v UBA Plc* (2005) 14 NWLR (Pt.945) 421 at 436.

This issue 5 has been answered in Issues 3 and 4 but for emphasis I would repeat that the Appellant is squarely stopped from his assertion that he owns the property Nos. 6, 8 and 10 Mezu Lane, Owerri since the earlier decision in HOW/201/93 is that the property had gone over to the opponents of Mezu International Co Ltd, the other name or image of the Appellant herein. Nothing has been done or can be done by the Appellant upon which this Court can change the decisions by the two Courts below whose findings and decision I adopt. The issues all having been resolved in favour of the Respondents and against the Appellant; I dismiss this appeal which lacks merit. I award N50,000.00 to the Respondents.

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**MUKHTAR JSC**

I have had the opportunity of reading in advance the lead judgment delivered by my learned brother Peter-Odili JSC. I am in full agreement that the appeal is completely devoid of merit and deserves to be dismissed. I also dismiss the appeal in its entirety and abide by the consequential orders made in the lead judgment.

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**CHUKWUMA-ENEH JSC**

Before now I have had the advantage of reading the judgment

prepared by my learned brother Peter- Odili JSC in this matter and I agree with the reasoning and conclusion in dismissing the appeal as lacking in merit.

In the light of the nature of the case, I have decided to emphasize one or two points crucial to determining the issues in this matter. It is a fact that at the close of the plaintiff's case at the trial court, the defense in exercise of its right has decided not to call evidence at all in the matter but to rest its case on the plaintiff's case and consequently closed its case. The parties there and then have proceeded to their final addresses in the matter. The plaintiff is the appellant and the defendants are the respondents in this court. The plaintiff has submitted that the trial court has at that stage of the proceeding to deal with the case on the plaintiff's evidence alone as now accepted and unchallenged by the defense. Having highlighted the fact that according to the plaintiff's testimony that the property in question otherwise known as Uhu-Umuoyima belongs exclusively to plaintiff who has mortgaged only a part of the said land to the 1st defendant/respondent and who as claimed by the appellant in turn has wrongly transferred the ownership of the entire land of Umuoyima to the 2nd defendant i.e. without any right to do so but on the pretext that the said mortgagee has thereby mortgaged his entire land of the Uhu-Umuoyima to it and not just as to the said part of the land in dispute. The plaintiff has submitted that, he at no time has transferred his interest in the said land known as Uhu-Umuoyima of plots 6, 8 and 10 to Mezu International Ltd (a company owned completely by the plaintiff).

What really has emerged from the facts of this case is that by a court process albeit an affidavit sworn to by the instant plaintiff/appellant otherwise known as Exhibit G1 in an earlier suit No. How/201/88, between Mezu International Ltd against Cooperative and Commerce Bank (Nig) Plc and Nakes O. Obiakor has established how the 1st Defendant/Respondent in instant matter has sued the plaintiff in suit No. How/201/88 in respect of the same parcel of land called Uhu- Umuoyima otherwise known as plots No.6, 8 and 10 Mezu Lane Owerri used to secure the loan to the said company and that the plaintiff/appellant as a witness in the suit No. How/201/88 has clearly deposed in the said affidavit Exhibit G1 thus:

*"3. That the plaintiff/applicant is the owner of the properties*

known as and called Nos. 6, 8 and 10 Mezu Lane Owerri.

4. That the said properties known as and called Nos. 6, 8 and 10 Mezu Lane Owerri are where the plaintiff/applicant carries on its business.

5. That on Monday 17th day of May, 1993 I read from page 15 of 'The Statesman' Newspaper of 17th May, 1993 an advertisement stating that the 1st defendant/respondent has authorized the 2nd defendant/respondent to sell by Public auction the said properties of the plaintiff/applicant. A copy of the said 'The Statesman' Newspaper publication is hereby exhibited and marked as EXHIBIT 'A'.

6. That when I went to my office at the said No. 6 Mezu Lane Owerri I was informed by some of the workers and I verily believed them that the said 2nd defendant/respondent came to the said property earlier that morning and said that he had sold the said property.

7. That I then consulted a solicitor B.A. Njemanze Esq. who informed me and I verily believed him that the purported sale of the said properties was wrong in that it did not comply with the provisions of the AUCTIONEERS LAW CAP 12 OF THE 1963 LAWS OF EASTERN NIGERIA.

8. That the plaintiff/applicant has instituted an action against the defendants/respondents claiming as follows:-

(a) a declaration that the purported sale of the plaintiff's property known as and called uhu-umuoyima at Owerri and otherwise called and known as Nos. 6, 8 and 10 Mezu Lane Owerri by the defendants by a purported Public Auction sale on 17th day of May, 1993 is null and void and of no effect whatsoever.

(b) an order of injunction restraining the defendants, their servant, agents or anybody whatsoever acting on the said purported sale from entering upon the said property of doing anything which is against the proprietary right of the plaintiff over the said property.

9. That the plaintiff/applicant will suffer untold hardship and irreparable loss if the defendants/respondents are not restrained by the court from ejecting the plaintiff/applicant from the said properties."

In the face of these formidable depositions as to the facts in regard to the case in How/201/88, the present defendant/1st respondent having no option against the odds so formidably, stacked against it conceded the case hence the reconstitution of the claim as per the

instant action in its present shape and form i.e. as per How/201/93. The whole essence of the question in the instant action is that plaintiff/appellant seeks to set aside the sale of the property encompassing the entire Uhu-Umuoyima land to the 2nd defendant/respondent in satisfaction of the security granted to Mezu International Ltd being  
 B the land in dispute by public auction on 17/5/1993 as null and void.

By the gist of this matter I have decided to emphasize on two aspects of this case to wit: (1) firstly, as it relates to the defense deciding not to call evidence at the close of the plaintiff's case arising from the damaging strictures that have been made manifest in the plaintiffs case after a rigorous cross-examination and secondly, on the appellant having made an assertion on oath against his interest in the land in issue in this matter by deposing in the aforesaid affidavit as per the above abstract - Exhibit G1 in suit No. How/201/88 that the  
 C landed properly otherwise known as Uhu-Umuoyima belongs to the  
 D Mezu International (Nig) Ltd as against the plaintiff/appellant's evidence in the instant matter that the said land belongs to him, the plaintiff exclusively. The defendant/1st respondent's counsel Chief Ugolo at the close of the plaintiffs case has rested his case on the  
 E plaintiffs case by urging that this procedure could be adopted where any of the following conditions exists to wit:

- (a) that the plaintiff has not made out any case for the defendant to answer, or
- (b) that the defendant admits the facts of the case as stated  
 F by the plaintiff, or
- (c) that the defendant has a complete answer in law to the plaintiff's case (see *Afomaja v. Commissioner of Federations & Ors.* (1995) 1 NWLR (pt.411) 69 at 81.

G I affirm the foregoing abstract of the defense submission in this matter as the correct state of the law as some of the grounds upon which the defense may take up the gauntlet to challenge the plaintiffs case in a no-case submission. I must however add that the defense has also the right to raise a plea of no-case to answer where  
 H the plaintiff's case has been so discredited in cross-examination as to render his case inadequate and most unreliable in the circumstances that no reasonable tribunal will act on it. I add that the defense has the right to so urge at the close of the plaintiffs case and the parties may then proceed to make their final addresses i.e. from both sides.

The defense in the present situation has made it abundantly clear it is resting its case on that of the plaintiffs case. In that wise the defense cannot be allowed by the trial court where the defence of no-case submission is overruled to return to the position (i.e. status in quo ante) before the submission of no-case submission with the right to call evidence in defense of the claim as the defense has foreclosed that right as against where although the defense has raised a no-case to answer it does not rest its case on that of the plaintiff. In the latter situation where the submission of no-case submission is overruled, the defense still has the choice of giving evidence in the substantive matter. In this matter what the defense is saying and loudly for that matter in this case in so many words is that there is no case on the truth of the evidence so far given by the plaintiff and the witness before the court in proving his case. Simply put, that the plaintiff has not made out a prima facie case against the defence to warrant the defense being called to make a reply. On an overview of this case I find that the recourse to the question of no case to answer in this matter is well taken. It is the only proper course on the state of the proceeding at the closure of the plaintiff s case here.

I also find that the plaintiff has not only failed to raise a prima facie case for the defense to reply, it is beyond argument that the plaintiff s case has been completely routed in cross-examination that no reasonable tribunal will rely on it to call on the defence to reply. The plaintiff s evidence has been so shake in cross-examination as to be unworthy of any credence. The difference between where the defense is resting or not resting on the case of the plaintiff is very material; in that regard the court considers the case on the evidence of the plaintiffs case alone whereas where the defense is not relying on it and it testifies after having been overruled if it so wishes; the court in the latter situation has to examine the case on the totality of the evidence from both sides of the divide that is where the defense eventually leads evidence. With this brief resume on the immediate fall-outs from making a no-case submission in this matter and on similar occasions vis-a-vis whether or not the defense has acted properly in this matter, the defense rightly has exercised its right relying on the fact that the plaintiff has not established a prima facie case to warrant calling on the defense to lead evidence in defense of the claim against it. There is evidence of various land instruments in con-

tra-distinction to the above abstract that is to say Exhibit G1 - an affidavit deposed to in respect of suit No.How/201/88 that the property in issue is uhu-umuoyima land i.e. encompassing plots No.6, 8 & 10 belongs to the plaintiff and that Mezu International (Nigeria) Ltd, a corporate entity is owned completely by the plaintiff and his family. Indeed the instant plaintiff is clearly the alter ego of the said legal entity as he exclusively directs and manages the affairs of the company including operating its Accounts with their bankers. The other more discrediting and damaging feature of the plaintiffs case is the deposition on oath as per Exhibit G1 by the plaintiff as a witness in suit No.How/201/88 that Mezu International Ltd is the owner of the said property. By this deposition has been rendered nugatory the attachment for the sale of the said land in dispute in suit No.How/201/88. It does not therefore lie in the plaintiff's mouth to contend against his assertion on oath that the entire property belongs exclusively to Mezu International Ltd. This is clearly the only necessary inference arising from Exhibit G1. This to all intents and purposes has put paid to the appellant's prangs in playing Mr. Jekyll and Hyde in this matter. Specifically in Exhibit G1 he has deposed to wit: "The plaintiff (that is Mezu International) is the owner of the properties known as 'Uhu Umuoyima' or, No. 6, 8 & 10 Mezu Lane Owerri, Imo State" that is against his claim here that the land belongs exclusively to him. This is a conclusive evidence of ownership of the property against him. He is estopped from claiming to the contrary. He cannot therefore, be heard to resile from that statement of fact even moreso as it is made on oath in the instant action in which Mezu International Ltd has been sued to recover the money owed to the 1st defendant/respondent and secured upon the aforesaid mortgage of the land in dispute in this matter. The plaintiff has given in evidence that he is the owner of the said property contrary to what he has deposed to as per the foregoing abstract as per Exhibit G1. There can be no doubt that the court in the light of the apparent fraud being practised on the court, that the court in the circumstances is obliged even then to lift the veil of incorporation to ascertain the true fact of the plaintiff's position/status as in the instant matter. Even then the plaintiff without any prompting has on his own has lifted as per exhibit G1 the veil of corporate entity of the company - Mezu International Ltd and he therefore cannot complain.



Although the separate legal entity of the company is sacrosanct, there are occasions when the law will allow lifting the veil of corporate entity and these occasions are set under the Companies and Allied Matters Act i.e. CAMA. I need not go into them here. One of such occasions is as here when it is necessary to disregard the doctrine of separate legal entity from the founders of a company as where the founders are hiding under the cloak of separate corporate entity of a company in perpetuating frauds as in this matter. See *Foss v. Harbottle* (1843) 2 HA 77 and *Salomon v. Salomon & Co. Ltd* (1897) AC 22.

The next point undeniably is the position of the plaintiff in this matter as per Exhibit G1 wherefore he has, as it were, made on oath a statement against his interest in regard to the ownership of Uhu Umuoyima land. He cannot be allowed in such circumstances to approbate and reprobate on the same question of the ownership of the land in dispute in this matter as he likes. The whole story of the ownership of said property by the plaintiff vis-a-vis the ownership of the same property by Mezu International Ltd. as per Exhibit G1 is pervaded by the dubious acts of the plaintiff/appellant and no court will deal with such a slippery customer. On the authority of the case of *Bankole v. Tapo* (1961) ANLR 140 it is settled that where a plaintiff in a prior proceeding has given evidence supporting the title of another to land, it is held that in a subsequent proceedings he is precluded albeit estopped from denying that title is in that other person. Following from this settled principle of law the plaintiff in the light of Exhibit G1 cannot deny that the title to the entire Uhu Umuoyima land is vested on Mezu International Ltd. As an aside, it is important to note the distinction between the instant statement made as it were against interest as per Exhibit G1 vis-a-vis the question of formal admissions simpliciter: I must not also be taken here as raising the question upon the principle of declarations against interest which arises indeed becomes relevant and admissible only when the declarant is dead and admissions simpliciter. The plaintiff's position on the backdrop of the above cited case is that his claim is not only untenable on the facts and law but also it is avowedly fraudulent that no court will lend him any helping hand to perpetuate his fraudulent practices on the court. He is estopped from denying that the title to the land in dispute is in the company Mezu International Ltd. This clearly is a

case where the cheater is cheated in his attempt to be clever by half.

For the above reasons and the fuller reasons contained in the lead judgment of my Lord Peter Odili, I do not see any merit in the appeal. Besides this is particularly so as the two lower courts have made concurrent findings on it. This appeal is most un-meritorious  
B and I dismiss the same with N50,000.00 costs to the respondents and abide by other orders as contained in lead judgment.

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***MUNTAKA-COOMASSIE JSC***

C            I have the privilege of reading in draft the judgment just delivered by my learned Lord Mary Peter-Odili JSC in this particular appeal. I entirely agree with his reasoning and conclusion reached therein, which, my lords, I intend to adopt as mine, based on the  
D reasons adumbrated in the lead judgment. I too dismiss this appeal which lacks merit. The judgment of the two lower courts which are correct and un-perverse cannot be correctly interfered with by me. I endorse the order as to costs.

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