

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY, 2013. SC. 139/2004
CORAM:- I. T. MUHAMMAD, J. A. FABIYI, S. GALADIMA,
M. D. MUHAMMAD, S. S. ALAGOA, JJSC

EZEKIEL APATA APPELLANT
AND
1. JAMES OLANLOKUN
2. RUFUS AJIBADE RESPONDENTS

APPEALS - Issues - Proliferation - Supreme Court abhors proliferation of issues - Where only a few issues would determine appeal (H1)

LAND LAW - Title - Res judicata - Application - Estoppel per rem judicatam is applicable here - As the parties, land and subject matter in exhibits P1 & P2 are the same (H2)

LAND LAW - Title - Possession - Respondents have established title as shown in exhibits P1 & P2 - As a successful defence of a previous land case - Is in itself an act of possession - In ascertaining title (H3)

FACTS

Before the High Court of Osun State, Ilesha, plaintiffs/respondents instituted this action against defendant/appellant, seeking inter alia for a declaration that respondents are entitled to the customary right of occupancy to land in dispute, forfeiture of the customary tenancy of appellant on the land and injunction restraining appellant from entering the land. The original owner of the land one Ogidan (i.e. respondents' ancestor) had given the land in dispute to appellant's father one Samuel Apata, to farm on the condition of his (Apata) making annual payment of 1 cut of cocoa as Ishakole to Ogidan. However, appellant's father had after sometimes refused to pay the agreed Ishakole. Appellant's father proceeded to take action against 1st respondent (who is a successor of the ancestor) in Grade B Customary Court in Suit No. SB 11/76. The proceedings and judgment in the above suit which did not favour appellant's father, was received in evidence as exhibit P1.

Appellant's father thereupon appealed to Grade A Customary Court in R/33/26. The proceedings and judgment thereat was received as exhibit P2. The judgment in exhibit P2 was equally not favourable to appellant's father. Appellant who succeeded his father upon the latter's death, also refused to pay the Ishakole. Respondents consequently commenced this action. Both parties filed their respective pleadings and the matter went to hearing. At the end of hearing, the court held that appellant derived his title to the land from his father who had failed to prove his title by virtue of exhibits P1 and P2. Appellant was therefore estopped from re-litigating on the same piece of land as a final pronouncement on the land had been made by the Customary Courts. The court thus granted the reliefs sought by respondents. Aggrieved, appellant appealed to the Court of Appeal which dismissed the appeal. Aggrieved further, appellant lodged appeal in Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Court below was right in upholding the trial Court's treatment of Suit Nos SB/11/76 and R 36/76 as constituting issue estoppels.

2. Whether the lower Court was right in upholding the judgment of the trial Court that the Respondents had proved their case against the Appellant to entitle them to judgment.

HELD (Unanimously dismissing the appeal per

ALAGOA JSC)

APPEALS - Issues - Proliferation

1. The issues formulated by the Appellant appear to me proliferated. This Court has stated and restated that it abhors the proliferation of issues where only a few issues would determine the appeal.

Musdapher JSC, (as he then was) was more emphatic. In OMEGA BANK (NIG.) PLC. v. O.B.C. LTD (2005) 8 NWLR (PART 928) 547 he stated thus,

"This Court has on several occasions condemned the proliferation of issues in briefs of argument. It is not the number of issues for determination formulated that determines the

quality of a brief or that determines the success of an appeal.
(p. 3369 A)

LAND LAW - Title - Res judicata - Application

2. What else is there to be explained to the Appellant? The identity of the land in dispute was never in doubt and the Appellant's purported title to the land could not be anything else than what he had derived from his late father Samuel Apata who had first litigated on the said land against the Respondents in the Grade B Customary Court (Exhibit P1 - Suit No. SB 11/76) where his father Samuel Apata lost the case and on review to the Grade A Customary Court (Exhibit P2 - Suit No. R 33/76) where the Appellant's father again lost the reviewed case. The parties in Exhibits P1 and P2 are the same, the land in both actions are the same, the subject-matter and everything else between Exhibits P1 and P2 are the same. A comparison of the claim in the High Court leaves no one in doubt that the parties or privies, the land and the subject-matter are the same with the proceedings and judgments in the Grades B and A Customary Courts. This is a clear case in which "*estoppels per rem judicatam applies.*"(p. 3370 E)

LAND LAW - Title - Possession

3. As earlier pointed out there is evidence that the Appellant gave out portions of the land outside his holding to other persons which led to Court actions as evidenced by exhibits P3 and PW4. These show acts of possession by the Respondents who made full use of the land and never slept on their rights. The judgments of the trial Court and the Court below were based on Exhibits P1 and P2.

The Respondents have succeeded in establishing ownership of the land as shown in all the litigations on the land in the various Customary Court judgments notably exhibits P1 and P2 which were tendered in the proceedings in the trial High Court which gave judgment for the Respondents which judgment was confirmed by the Court below.

It is a correct statement of the law that a successful defence of a previous land case is in itself an act of possession

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in ascertaining title to the land. (p. 3374 A)

REPRESENTATION

T. O. Busari, Esq., for Appellant

Sonny O. Wogu, Esq., with Mrs. C. P. Egwuatu, and O. E. Olumekwu,

B (Mrs.), for the Respondents

CASES REFERRED TO

G.K.F. Invest. Nig. Ltd. v. NITEL Plc. (2009) 15 NWLR (pt. 1164) 344

C Omega Bank Nig. Plc. v. O.B.C. Ltd. (2005) 8 NWLR (pt. 928) 547

Ibrahim v. Ojomo (2004) 4 NWLR (pt. 862) 89

Ezewuihe v. Ekeukwu (1995) 7 NWLR (pt. 410) 537

Nkanu v. Onum (1977) 5 SC 13

D Fadiora v. Gbadebo (1978) 3 SC 219

Garuba v. Yahaya (2007) 3 NWLR (pt. 1021) 390

Nwankwo v. Oloko (1988) NWLR (pt. 79) 532

Idundun v. Okumagba (1976) 9/10 S.C. 246 - 250

Sapo v. Sunmonu (2010) 11 NWLR (pt. 1205) 374

E Sobanjo v. Oke (1954) 14 WACA 573

Amadi v. Nwosu (1992) 6 SCNJ 59

Igwego v. Ezeugo (1992) 6 NWLR (pt. 249) 561

Oduntan v. Akibu (2000) 7 SC (pt. 2) 106

F Anaeze v. Anyaso (1993) 5 NWLR (pt. 291) 1

LEAD JUDGMENT BY ALAGOA JSC

This is an appeal against the judgment of the Court of Appeal Ibadan Division (hereinafter referred to as the lower Court or the Court below) delivered on the 2nd of December, 2003 affirming the judgment of the High Court Ilesha, Osun State delivered on the 30th of June, 1992. At the said High Court, the present Respondents as Plaintiffs for themselves and on behalf of the Ogidan Family took out a Writ of Summons against the present Appellant as Defendant claiming the following:

i. Declaration that the Plaintiffs are entitled to the customary right of occupancy to that piece or parcel of land situate, lying and being at Imoo near Itagunmodi bounded on the West by the Motor Park, on the South by John Fagbewesa's farm" on the East by the

Kuku Hill and on the North by Joseph Ola's farm.

ii. Forfeiture of the customary tenancy of the Defendant on the said land.

iii. 16 cut of dried cocoa beans at 1 cut per year from 1976 or its cash equivalent.

iv. Injunction restraining the defendant, his servants, agents B and those claiming through him from entering the land in dispute.

The Plaintiffs filed a 30 page Statement of Claim contained at pages 5 - 8 of the Records while the Defendant filed a 21 page Statement of Defence contained at pages 8 - 11 of the Records.

The Plaintiffs' reply to the Statement of Defence is contained C at Pages 11 & 12 of the Records. Pleadings were thereafter exchanged by and between the parties after which the case proceeded to be heard, and in its considered judgment, the trial Court found in favour of the Plaintiffs substantially granting the reliefs sought.

D Aggrieved, the Defendant appealed against the judgment to the Court below which dismissed the appeal and affirmed the judgment of the trial Court. This is a further appeal by the Appellant against that judgment.

E This followed the grant by the Court below of a motion on notice dated the 10th February, 2004 and brought pursuant to Section 233 (3) of the Constitution of the Federal Republic of Nigeria, 1999 for *"leave to appeal to the Supreme Court against the decision of this Honourable Court delivered on the 2nd of December, 2003 in Suit No. CA/1/159/94 other than grounds of law alone that is mixed F law and fact."*

The Notice of Appeal consists of 13 (thirteen grounds) and the said Grounds are reproduced hereunder devoid of particulars:-
Grounds of Appeal:

1. That the Lower Court erred in law in dismissing the Appellant's appeal without properly considering the Appellant's complaints particularly that the Respondents did not prove their root of title to entitle them for a grant of declaration of title and payment of Ishakole this has led to gross miscarriage of justice.

H 2. The Lower court erred in law in holding that the Respondent had proved his root of title to the land in dispute on the evidence it was able to gather from Exhibit P1 which was not evidence before the lower Court and part of 2nd Respondent's evidence quoted

by the lower Court as amounting to prove of root of title without properly considering and analyse the Appellant's submissions in his brief of argument advanced in paragraphs 6.16 to 6.38 on pages 7-10 of the Appellant's brief of argument. This has led to gross miscarriage of justice.

B 3. The lower court erred in law in holding that the identity of the land in dispute was certain, when establishment of identity of land is never based on presumption as the lower court has held in this case. This has led the Court to gross miscarriage of justice.

C 4. The Learned Justices of the Court of Appeal erred in law in holding that the Appellant's ancestor did pay Ishakole, when the Court held, as follows:-

D *"AND in the Customary Court proceedings in P1 and P2 that there is abundant evidence that the Appellant's father paid Ishakole to the Respondents' father privies in title to the land."*

E When the proceedings and the judgments in the said Exhibits P1 and P2 were not subject of appeal before it and it was so treated in order to defeat the Appellant's case without considering the Appellant's argument advanced in Issue No. 4 of the Appellant's Brief. This has led to gross miscarriage of justice.

F 5. That the lower court erred in law in failing to hold that there was no sufficient and credible evidence to support the Respondents claim for payment of Ishakole having regard to the evidence on record that the Appellant was indeed paying Ishakole.

G 6. That the Lower Court erred in law for failing to consider and interpret the proceedings and judgments tendered in Exhibits P1 and P2 between the Appellant and Respondents; moreso when both parties to this appeal are relying on the judgment as estoppels. Had the Lower Court properly considered Exhibit P2, the Lower court should not have dismissed the Appellant's appeal.

H 7. The Lower Court erred in law in failing to hold that it was an error in law for the trial Court to extract and treat evidence in Exhibits P1 and P2 as if it was evidence before it to justify given judgment for the Respondent when the Respondent failed to prove their case with credible evidence. This has led to gross miscarriage of justice.

8. The Learned Justice of the Lower Court erred in law in holding that the Plaintiffs claim for title of the land in dispute in suits Nos. SC/1/76 and R33/76 were dismissed when it was not so, these

findings have influenced the lower Court to a wrong decision and miscarriage of justice.

9. The Learned Justices of the Court of Appeal erred in law in failing to determine properly as to who has the judgment in exhibits P1 and P2 between the parties to the case failure of which has led the lower Court to a wrong application of the judgment of the two judgments in favour of the Respondents and against the Appellant this has led to a gross miscarriage of justice. B

10. The Lower Court erred in law in holding that Exhibits P1 and P2 were tendered to establish that the Appellant's father paid Ishakole in his life time when there was no such evidence from the Appellant's father or judgment that Appellant's father was ordered to pay Ishakole on record, this findings have influence the Court to a wrong conclusion and miscarriage of justice. C

11. The Lower Court erred in law in failing to examine properly, evaluate, and analyse the Appellant's case as raised in Issue No. 3 on page 13 - 4(sic) paragraphs 8.01 to 8.08 of the Appellants brief by merely holding that the trial Court evaluated the Appellant's evidence. D

12. The Lower Court erred in law for failing to hold that the trial Court was wrong to give judgment for forfeiture of the Appellant's holdings where there was no evidence to support such judgment. This has led the Court to a gross miscarriage of justice. E

13. The lower Court erred in law in failing to hold that the judgment of the trial Court was against the weight of evidence. F

The Appellant at pages 4 and 5 of his Brief of Argument dated the 10th August, 2004 and filed on the 27th August, 2004 distilled from the Grounds of Appeal the following six issues for the determination of this Court:- G

1. Whether the Lower Court was right to hold that the Respondents have proved their root of title to the land in dispute in the absence of direct evidence but basing its findings on evidence adduced and judgment in Suit No. SB 11/76 marked Exhibits P1 and Suit No. R33/26 marked exhibit P2 which was not in their favour. H

2. Whether the lower Court was right to hold that the identity of the farmland in dispute was certain on basing its findings on the evidence and judgments in Suit No. SB 11/26 and R33/76 Exhibits P1 and P2 and on presumption that knowledge of the Appellant's

father of the farmland in dispute can be put to the son and was so put before arriving at its conclusion.

3. Whether there were sufficient evidence on record to entitle the lower Court to hold that the Respondents had proved that the Appellant's father was a tenant on the farmland in dispute and was paying Ishakole and sufficient enough to warrant forfeiture of the Appellant's holdings on the farmland in dispute.

4. Whether the lower Court was right in law to treat the evidence in suit No. SB 11/76, Exhibit P1 and the argument, Court observation and judgment in Suit R 33/76, Exhibit P2 as res judicata against the Appellant when the judgment in Exhibits P2 was in favour of the Appellant's father.

5. Whether the lower Court was right for failure to consider the issue of evaluation raised before it when it was the Appellant's complaint that the learned trial judge was wrong not to evaluate and consider the Appellant's case before arriving at its judgment and the effect thereof.

6. Whether the Lower Court was right to confirm the trial Court's judgment having regard to the weight of evidence before arriving at its conclusion.

The Respondents in their own Amended Brief of Argument dated the 26th February, 2013, filed on the same day but deemed properly filed on the 20th March, 2013 formulated the following two issues at page 7 of the said Amended Brief:-

1. Whether having regard to the evidence on record, the Court of Appeal was not right in upholding the judgment of the trial Court that the Respondents had proved their case against the Appellant to entitle them to judgment (Grounds 1 to 5, 10 to 13 of the Grounds of Appeal).

2. Whether the Court below was right in upholding the trial Court's treatment of Suit Nos. SB/11/76 and R 36/76 as constituting issue estoppels (Grounds 6 to 9 of the Grounds of Appeal).

When this appeal came up to be heard on the 22nd April, 2013, Counsel for the Appellant T. O. Busari, Esq., urged this Court to strike out Grounds 7, 10 and 12 of the Notice of Appeal. Ground 12 he said was not argued at all. He adopted and relied on the Appellant's Brief of Argument and urged this Court to allow the appeal.

Sonny O. Wogu Esq., Counsel for the Respondent did not oppose the application for the striking out of Grounds 7, 10 and 12. This Court thereupon struck out Grounds 7, 10 and 12 of the Notice of Appeal. Mr. Wogu thereafter adopted the Respondents, Amended Brief of Argument as the Respondents' argument in this appeal and urged us to dismiss the appeal as lacking in merit and to uphold the judgment of the two lower Courts. B

Before going into the submissions in argument of this appeal, it is worthwhile delving briefly into the facts of the case in the trial High Court which has led up to this appeal. The 2nd Plaintiff in the trial High Court who is the 2nd Respondent in this appeal Rufus Ajibade and who alone testified in the said High Court said in evidence that the present Appellant's ancestor one Samuel Apata had been granted a piece of land to farm at Imoo Village near Itagunmodi by the Respondent's ancestor by name Ogidan who was the original owner of the land in dispute following Samuel Apata's introduction to Ogidan by John Fagbesa. The terms upon which Ogidan gave a portion of land to Samuel Apata to farm was initially on the annual payment by Samuel Apata of yams as Ishakole and when Samuel Apata's cocoa became mature, on the payment by Samuel Apata of 1 cut of cocoa to Ogidan as Ishakole. Samuel Apata complied with this annual payment of cocoa to Ogidan as Ishakole until the death of Ogidan. After the death of Ogidan, Samuel Apata continued to pay 1 cut of cocoa annually as Ishakole to John Fagbesa who succeeded Ogidan for sometime but later refused to pay this Ishakole to John Fagbesa. Samuel Apata then proceeded to take action against John Fagbesa's successor, one James Olanlokun (1st Respondent) in the Grade B Customary Court in Suit No. SB 11/76 the proceedings and judgment of which were received as exhibit P1. The proceedings and judgment - exhibit P1 are contained at pages 34 - 45 of the Records. Evidence given is that the judgment in exhibit P1 did not favour Samuel Apata who thereupon appealed or sought for a review in the Grade A Customary Court in R/33/26 which was received as Exhibit P2. The judgment in Exhibit P2 was also said not to have favoured Samuel Apata. Despite the judgments in Exhibits P1 and P2, Samuel Apata still refused to pay Ishakole. The boundaries of the land in Exhibit P1 were said to be Motor Road, Fagbesa's farm, Kuku Hill and Ola's farm. After the death of Samuel Apata, the C D E F G H

Appellant Ezekiel Apata succeeded him. Like his father before him, Ezekiel Apata was said to have refused to pay Ishakole and even went on to grant portions of land outside his holding to strangers which action gave rise to several court cases.

B Respondents' position was that the Appellant's father was not allowed to build a house on the land. This evidence was in contrast with that of the Appellant who claimed that the land in dispute belonged to his father and that he was born on the land.

The Appellant gave the boundaries of the land in dispute as John Fagbesa Kolanut farm, Joseph Ola footpath and Kuku Hill.

C The learned trial Judge noted that the identity of the land was not in dispute having been properly stated in Paragraph 18 of the Statement of defence which tallies with the evidence of the 2nd Plaintiff, Rufus Ajibade and the claim before the Court. See pages 29 - D 29A of the Records. The trial Court also stated that what the Defendant (now Appellant) was forcefully contesting had been put forward by his own biological father Samuel Apata when he took action against the 1st Plaintiff (1st Respondent in this further Appeal) James Olanlokun in the Grade B Customary Court in Osu in Suit No. SB E 11/76 SAMUEL APATA V. JAMES OLANLOKUN which is Exhibit P1 and lost. Samuel Apata then sought for a review of this case before the Grade A Customary Court in Suit No. R 33/26 SAMUEL APATA V. JAMES OLANLOKUN which is Exhibit P2 and also lost.

F The High Court held that the Appellant derived his title to the land in dispute from his father Samuel Apata who had failed to prove his title to the land in the Grades B and A Customary Courts as shown in Exhibits P1 and P2 and Appellant was therefore estopped from re-litigating on the same piece of land as a final pronouncement on the G land had been made by the Customary Courts. The High Court therefore held that the Respondents were entitled to the Customary Right of Ownership to the disputed land. The High Court held that the Appellant who is a tenant had by his refusal to pay Ishakole and claim to the land and giving out portions of the Respondents' land to H strangers was entitled to forfeiture. See page 31 of the Records lines 20 - 25. The High Court also held that the Respondents were entitled to arrears of Ishakole (or rent) for six years which was put by the Court at 6 cut of dried cocoa beans. The High Court then proceeded to give judgment for the Plaintiffs (now Respondents). The

order of injunction claimed by the Respondents was also granted. It is this judgment that went on appeal to the Court below that was also dismissed hence this further appeal.

The issues formulated by the Appellant appear to me proliferated. This Court has stated and restated that it abhors the proliferation of issues where only a few issues would determine the appeal. B

Ogbuagu, JSC, in G. K. F. INVESTMENT NIG. LTD. v. NIGERIA TELECOMMUNICATIONS PLC (2009) 15 NWLR (PART 1164) 344 put it simply this way -

“I need to stress that this court discourages the proliferation of issues.” C

Musdapher JSC, (as he then was) was more emphatic. In OMEGA BANK (NIG) PLC. v. O.B.C. LTD (2005) 8 NWLR (PART 928) 547 he stated thus, D

“This Court has on several occasions condemned the proliferation of issues in briefs of argument. It is not the number of issues for determination formulated that determines the quality of a brief or that determines the success of an appeal.”

Edozie, JSC, in IBRAHIM V. OJOMO (2004) 4 NWLR (PART 862) 89 was just as emphatic when he said as follows -

“Prolixity or proliferation of issues is not ideal as it tends to obscure the core issues to be determined and tends to reduce the issue to trifles.

Appeals are not won on large number or quality of grounds of appeal but on the quality of the content of the grounds of appeal and issues.” See also MOZIE & ORS V. MBAMALU & ORS (2006) 15 NWLR (PART 1003) 466; UGO V. OBIEKWE (1989) 1 NWLR (PART 99) 566; ANON LODGE HOTELS LTD v. MERCANTILE BANK OF NIGERIA LTD. (1993) 3 NWLR (PART 284) 721. F G

Having studied the issues formulated by the Appellant and Respondents in their respective Briefs of Argument, I consider the two issues formulated by the Respondents as appropriate enough to determine this appeal with slight amendments as to a re-arrangement of the order in which the issues were formulated with issue No. 2 now as Issue 1. The issues for the determination of this appeal are therefore now as follows:- H

1. Whether the Court below was right in upholding the trial

Court's treatment of Suit Nos SB/11/76 and R 36/76 as constituting issue estoppels.

2. Whether the lower Court was right in upholding the judgment of the trial Court that the Respondents had proved their case against the Appellant to entitle them to judgment.

B There can be no better way of commencing a discourse on issue 1 than a recourse to Falade J.'s judgment at page 29A line 36 to page 30 lines 1-13 of the Records where the learned Judge stated thus-

C *"What the Defendant is forcefully contesting here had been gallantly put forward by his biological father, Samuel Ojo Apata when he sued the 1st Plaintiff to the Customary Court in Osu in Suit SB 11/76: Samuel Apata V. James Olanlokun - Exhibit P1 in this case - and lost. He was dissatisfied and applied for a review to the Grade "A" Customary Court Ilesa in Suit R33/76: Samuel Apata V. James Olanlokun.*

E *All his pleas were dismissed by that Court, His claim for title to land metamorphosed into an issue estoppel. The Defendant cannot, or otherwise, is estopped from relitigating on this issue. All his pleadings and evidence with regard to this issue result in naught. The defendant derived his title from his father, late Samuel Apata. He cannot then be allowed to reopen an issue on which final pronouncement has been made as in the instant case."*

F The Court below could not have been more right. **What else is there to be explained to the Appellant? The identity of the land in dispute was never in doubt and the Appellant's purported title to the land could not be anything else than what he had derived from his late father Samuel Apata who had**
 G **first litigated on the said land against the Respondents in the Grade B Customary Court (Exhibit P1 - Suit No. SB 11/76) where his father Samuel Apata lost the case and on review to the Grade A Customary Court (Exhibit P2 - Suit No. R 33/76) where the Appellant's father again lost the reviewed case. The**
 H **parties in Exhibits P1 and P2 are the same, the land in both actions are the same, the subject-matter and everything else between Exhibits P1 and P2 are the same. A comparison of the claim in the High Court leaves no one in doubt that the parties or privies, the land and the subject-matter are the same**

with the proceedings and judgments in the Grades B and A Customary Courts. This is a clear case in which “estoppels per rem judicatam applies.” There are numerous authorities on this subject matter.

This Court puts the matter in perspective when Iguh, JSC in *EZEWUIHE & ORS V. REUBEN EKEUKWU & ORS* (1995) 7 NWLR (PART 410) 537 held thus-

“For a plea of estoppels per rem judicatam to succeed there must at least be established that -

- i. The identity of the parties (or privies)*
- ii. The identity of the res, namely the subject-matter of the litigation*
- iii. The identity of the claim and the issue in both the previous and the present action in which the plea is raised are the same. The burden is on the party who sets out the defence to establish the same.”*

See also *NKANU V. ONUM* (1977) 5 SC 13 at 18; *FADIORA v. GBADEBO* (1978) 3 SC 219 at 228; *OKIE V. ATOLOYE* (NO. 2) (1986) 1 NWLR (PART 15) 241 at 260, *ACHIAKPA v. NDUKA* (2001) 14 NWLR (PART 734) 623. In *EZEWUIHE v. EKEUKWU & ORS* (supra) the burden was placed on the party who relies on the plea.

In the present case the Respondents as plaintiffs in the High Court did just that by recourse to the previous suits in the Customary Court - Suit No. SB/11/76 - Exhibit P1 and R 36/26 Exhibit P2 to show that the matter had been litigated before and by evidence that there had been no further appeal from the decision of the Grade A Customary Court. Exhibits P1 and P2 were tendered in the course of proceedings in the High Court and the Court below was right to hold that unless the Appellant presents a judgment which ruled otherwise, the Respondents were right to rely for proof of title on Exhibits P1 and P2. See *OLUKOGA v. FATUNDE* (1996) 7 NWLR (PART 462) 516 at 532. There can be no doubt whatsoever that recourse to the claims with respect to the proceedings in the High Court and in the Customary Courts - Exhibits P1 and P2 show that the parties/privies, the subject-matter etc are the same when the proceedings in Exhibits P1 and P2 are properly scrutinized.

With respect to the attitude of Appellate Courts to decisions of Native and Customary Courts this Court per Akintan, JSC in *JIMOH GARUBA V. ISIAKA YAHAYA* (2007) 3 NWLR (PART 1021) 390,

held as follows-

“The attitude of Appellate Courts to the decision from those courts are-

(i) it is not the form of an action but the substance of the claim that is the dominant factor.

B *(ii) the entire proceedings in such court have to be scrutinized to ascertain the subject-matter of the case and the issues raised therein.*

(iii) It is permissible to look at both the claim as framed, the findings of fact and even evidence given before such Courts to ascertain what the real issues are.”

C With all that had been said earlier, I resolve Issue No. 1 in favour of the Respondents against the Appellant.

Issue 2 is whether the Court below was right in upholding the judgment of the trial Court that the Respondents had proved their D case against the Appellant to entitle them to judgment.

A substantial aspect of this issue has already been dealt with in Issue 1. There are numerous cases on the subject matter of proof of title to land under Customary Law.

E This Court in CHIEF STEPHEN NWANKWO & ANOR. V. DR. PATRICK IKECHUKWU OLOKO (1988) NWLR (PART 79) 532 held as follows-

“We have five ways of establishing title to a disputed land namely by:

F *1. Traditional Evidence ADO V. WUSU 4 W.A.C.A. 96 and 6 W.A.C.A. 24; KUMA V. KUMA 5 W.A.C.A. 4; STOOL OF ABINABINA V. CHIEF KOJO ENYIMADU 13 W.A.C.A. 171.*

2. Conquest

3. Grant

G *4. Sale and Purchase*

5. Prior possession and acts of ownership extending over a sufficient length of time.”

H See also IDUNDUN & ORS V. OKUMAGBA (1976) 9/10 S.C. 246 - 250, I.P.D. ABAYE V. IKEM UCHE OFILI & ANOR (1986) 1 SC.231; PIARO v. TENALO & ANOR. (1976) F.N.R. 229 at 234; MOGAJI V. CADBURY NIG. LTD. (1985) 2 NWLR 393 at 431; ATANDA & ORS v. AJANI (1989) NWLR (PART III) 511; OKAFOR v. IDIGO (1984) 1 S.C.N.L.R. 481 and BALOGUN V. AKANJI.

The list is indeed endless. A look at the pleadings and evidence

of the Respondents shows that they relied for their claim on traditional history and long acts of possession.

On proof to traditional title to land, this is what Belgore, JSC (as he then was) said in CHIEF AWARA OSU & ORS V. IBOR IGIRI & ORS (1988) 1 NWLR (PART 69) 221 -

“Where land ownership is claimed in customary law the best evidence is that of traditional title proved by way of ancestral history of ownership.” ^B

The Respondents in accordance with their pleadings and the evidence of Rufus Ajibade - 2nd Respondent at pages 13 - 16 of the Records have shown that the original owner of the land at Imoo near Itangumodi, one Ogidan gave a portion of the land to the father of the Appellant, Samuel Apata to farm. Samuel Apata was introduced to Ogidan by John Fagbesa who in fact later succeeded Ogidan on the land. John Fagbesa was succeeded on the land by James D Olanlokun (1st Respondent). The terms of the grant of the land by Ogidan to Samuel Apata to farm were initially upon the payment annually of tubers of yams to Ogidan but upon maturity of Samuel Apata’s cocoa, upon the payment annually of 1 cut of cocoa beans and a tin of palm oil as Ishakole. ^E

According to Professor T. O. Elias in his book LAND LAW IN NIGERIA the payment of Ishakole automatically created a landlord and tenant relationship between the land owner and whoever paid Ishakole to him. The unrebutted evidence of the Respondent is that Samuel Apata, father of the Appellant continued to pay Ishakole to Ogidan until Ogidan’s death and even to John Fagbesa who succeeded Ogidan for sometime when he ceased to pay Ishakole. Instead of continuing to pay Ishakole to the Respondents, Samuel Apata took action against the 1st Respondent James Olanlokun son of John Fagbesa in the Grade B Customary Court, Osu in Suit No. SB 11/76 claiming ownership of the land in dispute. The proceedings and judgment in the said Suit No. SB 11/76 are exhibit P1. Despite his loss in the Grade B Customary Court, he appealed or sought for a review in the Grade A Customary Court in R 33/76 where he again lost. ^H

Thereafter there was no further appeal. The Respondents tendered P1 and P2 in the course of hearing of the case in the High Court. The Appellant’s title to the land was only derivable from his father, Samuel Apata who had sued the Respondents in the Grade B

Customary Court and then on Appeal or review to the Grade A Customary Court in SB 11/76 and R33/76 and lost out.

As earlier pointed out there is evidence that the Appellant gave out portions of the land outside his holding to other persons which led to Court actions as evidenced by exhibits P3 and PW4. These show acts of possession by the Respondents who made full use of the land and never slept on their rights. The judgments of the trial Court and the Court below were based on Exhibits P1 and P2.

In WAHAB ALAMU SAPO & ANOR V. ALHAJI BINTU SUNMONU (2010) 11 NWLR (PART 1205) 374 this Court held per Ogbuagu, JSC that,

“As now settled proof of ownership is prima facie proof of possession, the presumption being that the person having title to the land in dispute is in possession.”

It would make no sense if it were otherwise. See also JONES V. CHAPMAN & ORS (1847) 2 EX 803. ***The Respondents have succeeded in establishing ownership of the land as shown in all the litigations on the land in the various Customary Court judgments notably exhibits P1 and P2 which were tendered in the proceedings in the trial High Court which gave judgment for the Respondents which judgment was confirmed by the Court below.***

It is a correct statement of the law that a successful defence of a previous land case is in itself an act of possession in ascertaining title to the land. See MOGO CHINWENDU V. NWANEGBO MBAMALI & ANOR (1980) 3 - 4 SC 21; JOSIAH SOBANJO v. ADESHINA OKE & ANOR (1954) 14 WACA 573; OKON OWON V. ETO NDON & ORS 12 WACA 71. It has not been seriously controverted that the land in dispute is only a smaller portion of a larger piece of land owned by the Respondents for which judgment has been given in favour of the Respondents in previous litigations in various Courts.

It is now very well settled on a long line of judicial authorities that the Supreme Court will not set aside concurrent findings of two lower Courts except such findings are perverse or there is violation of some principles of law or procedure or have occasioned a miscarriage of justice. See AMADI V. NWOSU (1992) 6 SCNJ 59; IGWEGO

V. EZEUGO (1992) 6 NWLR (PART 249) 561; EHOLOR v. OSAYANDE (1992) 7 SCNJ 217; AKEREDOLU V. AKINREMI (1989) 3 NWLR (PART 108) 164; OGUNBIYI V. ADEWUNMI (1988) 5 NWLR (PART 93) 215.

I do not find the concurrent findings of the lower Court and the High Court or even the findings of the Customary Courts bedeviled by any of these short comings. The Appeal cannot be sustained. It lacks merit and ought to be dismissed. I dismiss it and I hereby affirm the judgment of the Court below delivered on the 2nd of December, 2003.

I however make no order as to costs.

MUHAMMAD JSC

I read in advance the judgment just delivered by my learned brother, Alagoa, JSC. I agree with his reasoning and conclusion that the appeal lacks merit and it should be dismissed. I dismiss the appeal. I adopt the reasoning and conclusion as mine. I also adopt the consequential orders made in the leading judgment including one on costs.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Alagoa, JSC. I agree with the reasons therein advanced to arrive at the final conclusion that the appeal lacks merit and should be dismissed.

The Respondents herein, as Plaintiffs before the trial Court, claimed the land in dispute; inter alia. The claim is basically the same as earlier on contested in Exhibits P1 and P2 by both parties' privies and/or forebears. Payment of tribute which in traditional parlance is known as Isakole was established against the Appellant's father. The trial Court found in favour of the Respondents that the two Exhibits constitute issue estoppel. The Appellant herein appealed to the Court of Appeal which heard same and dismissed it without any hesitation.

The Appellant has decided to further appeal to this Court. The real contest before this Court is whether the doctrine of issue estoppel binds the Appellant from contesting the issues determined against

the forebears of the Appellant in respect of the same piece of land. It must be noted that issue estoppel is often referred to, as estoppel by judgment.

There is no doubt that the two Exhibits constitute issue estoppel in this matter. Therein, the Appellant's father Samuel Apata paid tribute (Ishakole) to the father of the Respondents. Same automatically created a landlord and tenant relationship. This is as asserted by Professor T. O. Elias in his book - Land Law in Nigeria. There is considerable force of logic in the pronouncement ably made and accepted as part of customary law dealing with ownership of land.

I must observe that the two lower Courts made concurrent findings of fact with respect to the application and effect of issue estoppel herein. The concurrent findings of fact were not, in any respect, perverse. They have not been shown to run against the current of evidence adduced. This court will not interfere in the prevailing circumstances. See the cases of *Oduntan v. Akibu* (2000) 7 SC (Pt. 2) 106; *Anaeze v. Anyaso* (1993) 5 NWLR (pt. 291) 1.

For the above reasons and the detailed ones adumbrated in the lead judgment, I too feel that the appeal is devoid of merit. It is hereby dismissed. I hereby endorse the consequential orders contained therein, inclusive of that relating to costs.

GALADIMA JSC

At the High Court of Osun State, holden at Ilesha, the present Respondents, as Plaintiffs for themselves and on behalf of the OGIDAN FAMILY, took out a Writ of Summons against the present Appellant claiming as follows:

"(i) Declaration that the Plaintiffs are entitled to the Customary Right of Occupancy to that piece or parcel of land situate lying and being at Imoo near Itagunmodi bounded on the West by the motor park, on the South by John Fagbewesa's farm, on the East by the Kuku Hill on the North by Joseph Ola's farm.

(ii) Forfeiture of the customary tenancy of the Defendant on the land.

(iii) 16 cwt. of dried cocoa beans at 1 cut per year from 1976 or its cash equivalent.

(iv) Injunction restraining the Defendant, his servants, agents

and those claiming through him from entering the land in dispute.”

Pleadings were ordered and exchanged by and between the parties after which the case was heard. In his considered Judgment, the learned trial Judge found in favour of the Plaintiffs thereby granting the reliefs sought by the said Plaintiffs.

Dissatisfied, the Defendant appealed against the Judgment of the Court below which dismissed the appeal and affirmed the Judgment of the trial Court. The Appellant has further appealed against that Judgment to this Court in his Notice of Appeal containing 13 grounds. From these Grounds of appeal six issues were formulated for determination of this Court as follows:

“1. *Whether the Lower Court was right to hold that the Respondents have proved their root of title to the land in dispute in the absence of direct evidence but basing its findings on evidence adduced and judgment in suit No. SB 11/76 marked exhibits P1 and suit No. R33/76 marked exhibit P2 which was not in their favour.*

2. *Whether the Lower Court was right to hold that the identity of the farmland in dispute was certain on basing its findings on the evidence and Judgments in suit No. SB/11/76 and R33/76 Exhibits P1 and P2 and on presumption that knowledge of the Appellant’s father of the farmland in dispute can be put to the son and was so put before arriving at its conclusion.*

3. *Whether there were sufficient evidence on record to entitle the Lower Court to hold that the Respondents had proved that the Appellant’s father was a tenant on the farmland in dispute and was paying Ishakole and sufficient enough to warrant forfeiture of the Appellant’s holdings on the farmland in dispute.*

4. *Whether the Lower Court was right in Law to treat the evidence in suit No. SB/11/76 Exhibit P1 and the argument, Court observation and judgment in suit R33/76 Exhibit P2 as res judicata against the Appellant when the judgment in exhibit P2 was in favour of the Appellant’s father.*

5. *Whether the lower Court was right for failure to consider the issue of evaluation raised before it when it was the Appellant’s complaint that the Learned trial Judge was wrong not to evaluate and consider the Appellant’s case before arriving at its judgment and the effect thereof.*

6. *Whether the Lower Court was right to confirm the trial*

Court's judgment having regard to the weight of evidence before arriving at its conclusion."

In their amended brief of argument; the Respondents set out their issues for determination as follows:

B *"1. Whether having regard to the evidence on record, the Court of Appeal was not right in upholding the Judgment of the trial Court that the Respondents had proved their case against the Appellant to entitle them to Judgment (Grounds 1 to 5, 10 to 13 of the Grounds of Appeal)"*

C *"2. Whether the Court below was right in upholding the trial Court's treatment of Suit Nos. SB/11/76 and R36/76 as constituting issue estoppels (Grounds 6 to 9 of the Grounds of Appeal)."*

D On 22/4/2013, when this appeal was heard, learned Counsel for the respective parties adopted their briefs of argument. Learned Counsel for the Appellant, O. Busari Esq. urged the Court to strike out Grounds 7, 10 and 12 of the Notice of Appeal since Learned Counsel for the Respondents, S.O. Worgu Esq., did not oppose the application for striking out Grounds 7, 10 and 12 hereof, the said Grounds were accordingly struck out.

E Delving briefly into the facts of this case with a chequered antecedent is necessary for the better understanding of the nature of the land in dispute which has culminated in this appeal. The 2nd Respondent herein was the 2nd Plaintiff in the High Court. He testified in that Court that the present Appellant's ancestor (one Samuel F Apata) had been granted a piece of land for farming at a village called Imoo near Itagunmodi by the 2nd Respondent ancestor called Ogidan who was himself the original owner of the land in dispute. The said Samuel Apata was introduced to Ogidan by John Fagbesa.

G The condition upon which Ogidan gave a portion of land to Samuel Apata to farm was initially on the annual payment of yams and 1 cwt. of cocoa pods as "*Ishakole*". Samuel Apata who kept faith with this arrangement, however reneged after the death of Ogidan; he however continued to remit 1 cut of cocoa annually as "*Ishakole*" H to John Fagbesa, the successor of Ogidan, but later stubbornly refused to honour the deal. It is then Samuel Apata proceeded to sue John Fagbesa's successor, one James Olanlokun (the 1st Respondent herein) at the Grade 'B' Customary Court in Suit No. SB 11/76 and the Judgment of that Court was received as Exhibit 'P1' con-

tained at pages 34 -45 of the Records. Court in Suit No. R/33/76, received as Exhibit 'P2'. Defying the existence of Exhibits P1 and P2, Samuel Apata still refused to pay "*Ishakole*".

The evidence from the Records shows that the boundaries of the land in Exhibit 'P1' were said to be Motor Road, Fagbesa's Farm, Kuku Hill and one Ola's Farm. After the death of Samuel Apata, his son Ezekiel Apata (the Appellant herein) refused as well to pay Ishakole. He went further to grant some portions of land outside his holding to strangers and this led to several court cases.

Respondent's position was that the Appellant's father was not allowed to build a house on the land. In contrast to this evidence, the Appellant has claimed that the land in dispute belonged to his father and that he was born on the land.

The learned trial Judge, fortified by the evidence of the parties and the Judgments in Exhibits P1 and P2 came to the conclusion that the Appellant derived his title to the land in dispute from his father Samuel Apata who had failed to prove his title to the land in the Grade 'B' and 'A' Customary Courts respectively, and the Appellant was therefore estopped from relitigating on the same piece of land. The trial High Court held therefore that the Respondents were entitled to the Customary Right of Ownership of the disputed land. It was held that the Appellant who was a tenant, having refused to pay 'Ishakole' and had given out portions of Respondent's land to strangers was liable to the forfeiture of the land. It was held that the Respondents were entitled to arrears of Ishakole for 6 years, put at 6 cwt. of dried cocoa pods.

The Appeal to the Court below by the Appellant encountered a brickwall. It was dismissed. Hence this further Appeal to this Court.

I observe that the issues set out by the Appellant for determination are unnecessarily proliferated into trifling details intended to obscure the two core issues involved in this appeal which are:

(a) Whether the Court below was right in upholding the trial Court's treatment of Suit Nos. SB/11/76 and R 36/76 as constituting issue estoppels.

(b) Whether the lower Court was right in upholding the Judgment of the trial Court that the Respondents had proved their case against the Appellant to entitle them to Judgment.

I am of the view that issue (a) above conclusively resolves issue

(b). At the High Court the learned trial Judge admirably resolved the issue estoppels; at pages 29A and 30 of the Records thus:

“However, what the Defendant is forcefully contesting here had been gallantly put forward by his biological father, Samuel Ojo Apata, when, he sued the 1st Plaintiff to the Customary Court in Osu in Suit SB 11/76: Samuel Apata V. James Olanlokun - Exhibit P1 in this case - and lost. He was dissatisfied and applied for a review to the Grade ‘A’ Customary Court, Ilesa in Suit R33/76: Samuel Apata V. James Olanlokun. All his pleas were dismissed by that Court. His claim for title to the land metamorphosed into issue estoppels. The Defendant cannot, or otherwise, is stopped from re-litigating on this issue. All his pleadings and evidence with regard to this issue result in naught. The Defendant derived his title from his father, late Samuel Apata. He cannot then be allowed to reopen an issue on which final pronouncement has been made as in the instant case.”

The Court below could not agree more. It concurred with the findings of the trial High Court. It is difficult to explain this point to the Appellant, who has obstinate refusal to understand the issue involved. The facts are bare and the evidence on records is overwhelming. The identity of the land in dispute was never in doubt. Appellant’s purported claim and title to the land is what he had derived from his late father Samuel Apata who had lost his case both in the Grade B and A Customary Courts vide the Judgment in Exhibits P1 and P2 respectively. The parties, the land in dispute, and the subject-matter in the said Exhibits P1 and P2 are the same. The two Courts below leave no one in doubt that this is a clear case in which the plea of estoppels per rem judicatam applied and was established. I therefore resolve this issue in favour of the Respondents.

Issue 2 is on the question of whether the Respondents had proved their case against the Appellant to entitle them to Judgment. A substantial aspect of this issue has already been dealt with in issue 1, needless repeating it. The Judgments of the trial Court and the Court below were predicated on Exhibits P1 and P2. The Respondents have succeeded in establishing ownership of the land as shown in those exhibits. It is a correct statement of the law that a successful defence of a previous land is in itself an act of possession. See *JOSIAH SOBANJO V. NWANEGBO MBALI & ANOR* (1980) 3-4 SC.21.

It is trite law that this Court will not set aside concurrent find-

ings of the two lower courts except such findings are perverse or there is violation of some principles of law or procedure or have occasioned a miscarriage of Justice. See AKEREDOLU V. AKINREMI (1989) 3 NWLR (Pt. 108) 164; AMADI V. NWOSU (1992) 6 SCNJ 59; IGWEGO V. EZEUGO (1992) 6 NWLR (pt. 249) 561.

For the above and detailed reasons advanced in the leading B
Judgment of my learned brother, ALAGOA JSC, which I fully adopt, I find that there is no merit in this appeal. Accordingly, the Appeal is dismissed. I hereby affirm the Judgment of the Court below delivered on the 2nd December, 2003. No order is made as to costs. C

MUHAMMAD JSC

Having had a preview of the lead judgment of my learned brother Alagoa, JSC, just delivered I agree with his lordship's reasoning and conclusion that the appeal which is lacking in merit be dismissed and I hereby dismiss same. D

I rely on the detailed summary of facts made in the lead judgment to enable me state in my own few words, purely in emphasis, why the appeal must fail. In my considered view Appellant's 1st issue E
is easily the most crucial of his lot in the determination of the appeal. The issue reads:-

*"Whether the lower Court was right to hold that the Respondents have proved their root of title to the land in dispute in the F
absence of direct evidence but basing its findings on evidence adduced and judgment in suit No. SB 11/76 marked Exhibit P1 and suit No. R33/76 marked Exhibit P2 which was not in their favour."*

Respondents' corresponding issue, their 2nd, read:-

*"2 Whether the Court below was right in upholding the trial G
Court's treatment of suit Nos SB/11/76 and R33/76 as constituting issue estoppel."*

Learned Appellant's Counsel is certainly wrong to have submitted that the Court below has erred in affirming the trial Court's decision on this vital issue. At pages 29A and 30, the trial Court has H
held thus:-

"However, what the Defendant is forcefully contesting here had been gallantly put forward by his biological father, Samuel Ojo Apata, he sued the 1st Plaintiff to the Customary Court in Osu in Suit

SB 11/76: Samuel Apata V. James Olanlokun - Exhibit P1 in this case - and lost. He was dissatisfied and applied for a review to the Grade 'A' Customary Court, Ilesa in Suit R33/76: Samuel Apata V. James Olanlokun. All his pleas were dismissed by that Court. His claim for title to the land metamorphosed into issue estoppels. The Defendant cannot, or otherwise, is stopped from re-litigating on this issue. All his pleadings and evidence with regard to this issue result in naught. The Defendant derived his title from his father, late Samuel Apata. He cannot then be allowed to reopen an issue on which final pronouncement has been made as in the instant case."

The evidence on record clearly shows that the land in dispute is exactly the same as the one litigated upon in Exhibit P1 as affirmed in Exhibit P2. The parties in the instant case are privies of the parties in Exhibits P1 and P2 in that the title of the parties herein draws from the parties in suit SB 11/76 at the Grade B Customary Court and affirmed by Grade A Customary Court in suit No. R33/76. The Appellant has not, from the evidence on record, established that the decisions in Exhibits P1 and P2 have been appealed against. It follows that these two decisions persist.

The Respondents relied on Exhibits P1 and P2 in proving their case as well. The two Courts below have held that neither party in the instant case is allowed to raise what had previously been determined by the Courts in the two Exhibits.

Estoppel, this Court has held in *Ezewani V. Onwordi* (1986) 4 NWLR (part 33) 27, is the rule of evidence which prevents the party estopped from denying the existence of a fact and the plea is a bar to testimony. A party relying on the plea succeeds on the proof of the following facts:-

- (a) that the parties or their privies involved in both the previous and the proceedings in which the plea is raised are the same;
- (b) that the claim or issue in dispute in both proceedings are the same,
- (c) that the subject-matter of the litigation in the two cases is the same;
- (d) that the decision relied upon to support the plea is valid, subsisting and final; and
- (e) that the court that gave the previous decision relied upon to sustain the plea was a court of competent jurisdiction.

The Respondents in the instant case who raised the defence had the duty of conclusively establishing all the foregoing outlined pre-conditions. The decisions of the two Courts below sustaining Respondents' plea that neither of them is allowed to relitigate their claim to the land in dispute are borne out by the record of this appeal. The lower Court's affirmation of the trial Court's judgment remains, therefore, unassailable. See *Oshodi v. Eyifunmi* (2000) 7 SC (Part 11) 145, *Dagachi of Dere v. Dagachi of Ebwa* (2006) 7 NWLR (Part 979) 382 and *Igwego v. Ezengo* (1992) 6 NWLR (Part 249) 561. B

It must be stressed too that Appellant's prayer that concurrent findings of facts of the two Courts that have not been shown to be perverse is never granted. The relief is accordingly hereby refused. *Igwego v. Ezeugo* (supra) and *Akeredolu v. Akinremi* (1989) 3 NWLR (part 108) 164. C D

For the foregoing and more so the fuller reasons adumbrated by my learned brother Alagoa, JSC, I find no merit in the appeal. I dismiss same and abide by the consequential orders decreed in the lead judgment. E

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