THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP THE HONOURABLE JUSTICE EFE IKPONMWONBA ï JUDGE
ON THURSDAY THE 9TH DAY OF JUNE , 2016

BETWEEN: SUIT NO. B/173/84:

UWENSUYI EDOSOMWAN - CLAIMANT

and

KENNETH I. OGBEIFUN é .. DEFENDANT

JUDGMENT

The claim against the Defendant is as follows:

(a) A declaration that the Plaintiff is the person entitled to the grant of a statutory right of occupancy in respect of the parcel of land measuring in area approximately 4638.220sq meters and verged pink on Plan No. ISO/BD/408/89 dated 17/3/89 situate at Egua-Edaiken in ward 23L A, Benin City within the Benin Judicial division.

(b) N1,000 (One Thousand Naira) being general damages for trespass.

(c) Perpetual Injunction restraining the defendant, his servants and or agents from committing further acts of trespass on the said land.

The Claimant called 3 witnesses to prove this case. PW1 is an official of the High Court who was subpoenaed to tender certified true copies of record of proceedings of the evidence of six witnesses that gave evidence in 1989. It is worthy to note that this suit was filed in 1984 and evidence was taken from about six witnesses before the case had to start de novo. The case started de novo again before this Court in 2006.

The Claimantôs case as presented is that the Claimantôs father (who was the original Claimant and had since died) applied for a parcel of land in Egua-Edaiken Ward 23L Pointers were sent to inspect the land and measure it. One of the pointers at the time gave evidence before one of the previous Courts. The land was certified free

from encumbrance and then the Application was approved by the Oba of Benin on the 12-10-62. The land is said to be 160 yards by 160 yards. After acquiring the land, the Claimantôs father took possession by purchasing the rubber trees on the land for the sum of £300. He cleared the land and continued to do so from time to time. He even sold part of the land to various buyers who have all built. In 1972, the presence of the Defendant was noticed on a small portion of the land. He wrote a letter through his Solicitors which the Defendant replied denying the trespass and nothing was heard from the Defendant until sometime in 1981, when the Defendant was claiming a parcel of land he sold to one Midford Edosomwan. The elders of the Community asked both parties to bring their original copy of the documents to enable them ascertain the real owner. The Claimant averred that sometime that night his fatherôs house was invaded by Policemen who later arrested him to the Police Station. At the Station he was forced to write a letter to Midford Edosomwan requesting him to give up the portion the Defendant was disputing with him for another parcel of land. The Defendant then fenced the land and built a gate around the area in dispute.

From cross examination of the witness it was revealed that Egua-Iyoba and Egua-Edaiken Communities were within Ward 23L. There was a boundary dispute between the 2 communities which was settled by the late Oba of blessed memory when he was the Edaiken. After the settlement in 1976 all previous applications by the respective wards remained valid.

PW2 the Surveyor under cross examination told the Court that from the signboard to the left along Uyigue Street is Egua-Edaiken area. While to the right facing the north is Egua-Iyoba. He said Oghobaghase Road is regarded as the Boundary road.

PW3 is Chief Charles Edosomwan SAN, he adopted his 2 statement on oath. Under cross examination he said he did not know Midford Edosomwan but was aware that he is one of those his father sold land to. He said he was aware that the Defendant took him to Court over the said land.

He was also aware that the Claimant in that case did not succeed on the basis of the fact that he could neither establish that his land fell either in Egua-Edaiken or Egua-Iyoba. He denied that his father ever said he made a mistake but explained that he did not want Midford to go into unnecessary expense to contest, so offered to give him another piece of land. He also agreed that the case got to the Supreme Court on the same ground. PW3 agreed that there was a dispute between the 2 communities but it was long after his father had acquired his property in 1962. He added that the Oba after settling the dispute decreed that all previous grants should remain. The Claimant closed his case. The Defendant called 2 witnesses in proof of his case, Himself and the Surveyor.

DW1 testified that sometime in 1982 the Defendant commissioned him to draw a litigation survey for him on a land measuring 100ft x 100ft. as there was a dispute which was in Court ï suit no B/258/81. He said the Defendant showed him the land and the boundaries and also the title documents with a survey plan dated 1971. He produced the litigation survey. Sometime in 1985, the Defendant called to commission him again for another litigation survey in respect of the same land measuring 200ft x 200ft for this suit now in Court. He carried out the survey and produced the plan.

He revealed that on Oghobaghase Street, when facing the north (Lagos) Egua-Iyoba is to the right towards Medical Stores road while Egua-Edaiken is to the left and that therefore the land in dispute fell within Egua-Iyoba plot allotment committee area.

Under cross examination he insisted that what is reflected in his plan is what he saw on ground.

DW2 is the defendant. He described the subject matter of this suit as a parcel of land measuring 200ft x 200ft situate at Ufumwen Street and Uyigie Street, off Medical Stores Road in Ward 23L Egua-Iyoba, Uselu Quarters, Benin City.

He testified that he acquired the land in 1970 when he applied to Egua-Iyoba Plot Allotment Committee in Ward 23L, Uselu, Benin City for a parcel of land measuring 200ft x 200ft. He said he accompanied a pointer to the land and he demarcated the land and fixed the communityôs beacon blocks on its boundaries and reported back to the committee that the land was free from dispute. The Oba thereafter approved the application. In 1972, the deed of conveyance was also executed with the Oba of Benin in his favour which was registered in the Lands Registry in Benin City, then he had a perimeter survey drawn. He testified that he purchased the rubber trees on the land from Mr Obude for £50. He cleared the land and started using it for cassava farming and planted mango seeds. He said all the while the Claimantôs father never disturbed him. He went on to say that sometime in 1975 and 76 he sold 100ft x 100ft each and transferred them to Mr Evbuomwan and Mr. Edegbere both abutting Uyigie Street and who have since built their houses. The remaining portion was 100ft x 100ft abutting Ufumwen Street. He said neither of the buyers were disturbed

Sometime in 1981, the Claimantôs father transfered100ft x 100ft of his 100ft x 200ft to Mr. Midford Edosomwan and he challenged him when he deposited sand, granite there. He was reported to the Police for malicious damage and both Midford and Claimantôs father were invited to the Police Station.

DW2 testified that members of both Egua-Edaiken and Egua-Iyoba Committees and other people looked into the matter and found that the land was in Egua-Iyoba land and allocated to him and asked the Claimantôs father to relinquish his claim to the land which he accepted. A letter was written to that effect. He denied ever urging the Police to harass the Claimantôs father. He revealed that Midford Edosomwan went ahead to institute an action against him claiming ownership of 100ft x 100ft out of the 100ft x 200ft and the case was heard and determined, while judgment delivered on 31/5/84. Further appeals by Midford to the Court of Appeal and Supreme Court were dismissed.

He insisted that the question of the ownership of the land in dispute has been settled and laid to rest in the suit no B/258/81 and is now res judicata. He reiterated the fact that a boundary dispute arose between the 2 plot allotment committees and Oba Akenzua directed his son the Edaiken who became Oba Erediauwa to look into it and settle same. The Prince (as he was) settled the matter and the boundary was Oghobaghase Street. He said while standing on Oghobaghase and facing Lagos direction all land to the right was settled to Egua-Iyoba land while all land to the left was Egua- Edaiken land. He said this happened before the dispute between himself and Midford broke out in 1981. He revealed that the land in dispute is to the right of Oghobaghase Street while facing Lagos and this makes it within the Egua-Iyoba Plot Allotment Committee area. The witness insisted that the land in dispute now has always been in Egua-Iyoba Ward 23L and the boundary redefined by Oba Erediauwa between the 2 wards in 1976 confirmed that. He said the Oba never stated that previous allocation made by the Plot Allotment Committees outside this area of jurisdiction should remain valid and insisted that each allocation automatically became invalid. Defendant said most of his witnesses were dead and tendered the evidence of 3

witnesses who testified for him in the case with Midford Edosomwan in 1981. He urged the Court to dismiss the claim in its entirety.

Under cross examination he agreed that he was never a member of the Plot Allotment committee of Egua-Iyoba community. He agreed that Oghobaghase Street was created after the Oba intervened in the boundary problem between the 2 communities in 1976 and said he was aware that the Claimantôs father wrote a letter to Midford not to go to Court.

At the close of evidence, both parties filed their written addresses as provided in the Rules. For the Defendant, E. F. Osifo of Counsel formulated 3 issues for determination to be:-

(1) whether having regard to Exhibits a and a1 this suit is not caught by the doctrine of Estopel per rem judicata and liable to be dismissed.

(2) Whether assuming but not conceding that this suit is not caught by estoppel, the Claimant has not failed to prove that the land in dispute measuring 200ft x 200ft is situate in Egua-Edaiken Plot Allotment Committee, Ward 23L area of jurisdiction as to make the allocation and/or grant of same to his late father valid.

(3) Whether the allocation of the land to the Claimantôs father remains valid and the Claimant can claim title to the land in the light of his late fatherôs admission against interest in Exhibit H and J.

For issue 1, Learned Counsel referred the Court to paragraph 20(a) ï (c) 21 and 24 of his 2nd Further Amended Statement of Defence and the Claimantôs reply in paragraphs 10 ï 21 of his Reply to Defendantôs further Amended Statement of Defence. Counsel referred the Court to Section 173 of the Evidence Act 2011 and the case of **Bamgbegbin vs. Oriare** (2009) 13 NWLR (pt1158) 370 at 386.

Counsel enumerated the 4 conditions that must be satisfied for the plea of res judicata to be upheld and referred to the following cases.

1. Oloruntoba Oju vs. Abdul Raheem (2009) 13 NWLR (pt.1157/83.
2. Tsokwa Oil and Marketing Co vs. UTC (Nig.) Plc. (2002) 12 NWLR (782) 437.
3. Oshoboje vs. Amida (2009) 18 NWLR (pt. NWLR (pt.1172) page 188.
4. Akayepe vs. Akayepe (2009) 11 NWLR (pt.1152) 217.

He submitted that the parties in this suit were the same and or privies of the parties in the previous suit. He drew the Courtôs attention to the fact that the relation between Claimantôs father and the Claimant in the previous suit was that of Vendor/Vendee,Transferor/Transferee, Assignor/Assignee or Successor/predecessor in title.

Counsel submitted that Midford Edosomwan was a privy of the original Claimant in this suit due to the fact that he was a vendee of the original Claimant. Counsel then went on to define ôPrivyô and referred to a host of cases on the definition. He contended that by Section 173 of Evidence Act 2011, a judgment binds the parties as well as their privies and the term privies includes not only the parties on the writ of summons but also privies to such parties. He referred the Court to the case of LSBPC vs. Purification Tech (Nig.) ltd. (2013) 7 NWLR (pt.1352) 82 at 109.

Learned Counsel submitted that the purported distinction between the subject matter and Exhibits a and a1 is artificial and only relates to the quantum of what was claimed in both suits.

He submitted that the res of Exhibits a and a1 and this suit were one and the same and referred to the case of **Makinde vs. Akinwale** (1993) 6 NWLR (pt.399) 1 at 9 where Res is defined. He referred to the dictum of Iguh JSC ï **Olohunde vs. Adeyoju**

(2000) 6 SC (pt.111) 118 at 130 and contended that effort in Exhibit a and a1 to prove the title of the original Claimant failed as the claim of Midford could not be proved.

Learned Counsel referred to several portions of the Exhibit a and concluded that the dismissal of the claim was founded on failure of evidence regarding proof that the land in dispute was situate at Egua-Edaiken Ward 23L.

Learned Counsel submitted that Exhibit a and a1 are valid, subsisting and final judgment of Courts of competent jurisdiction. He contended that the same documents were tendered, the same set of witnesses testified in both suits and submitted that this is a case for the application of the principle of estoppels per rem judicata as Exhibit a and a1 are conlusive and estopped the Claimant in this case from litigating the same issues again. He referred the Court to **Oshoboja vs. Amida** (supra) page 207 per Ogbuagu (JSC).

He added that the case constitutes an abuse of Court process and is liable to be dismissed. He urged the Court to resolve the issue in favour of the Defendant.

On issue 2, Learned Counsel submitted that the Claimant has not been able to prove that the land in dispute is within Egua-Edaiken area of jurisdiction. He submitted that in order to prove that the land in dispute is in Egua- Edaiken Area at the time of the purported allocation to the Claimantôs father, the evidential burden requires the Claimant to prove the boundary between the 2 wards as at 1962 when the allocation was made to the Claimantôs father. He insisted that none of the Claimantôs witnesses gave evidence to identify the boundary as at 1962. In the absence of such evidence, he submitted that this Court cannot reasonably find that as at 1962, the land in dispute was within Egua-Edaiken Plot Allotment Area.

On Exhibit I the layout plan, Learned Counsel contended that it was made by the Claimantôs father after controversy had arisen and was deliberately skewed to favour him in this suit which was anticipated. He added that the documents offends Section 83 (3) and (4) of the Evidence Act 2011 and urged the Court to expunge it from the record. He referred to the following cases: **Onire vs. Ighiwi** 92005) 5 NWLR (pt.917) 184 **Gbadamosi vs. Kabo Travels Ltd.** (2000) 8 NWLR (pt.668) 243 at 278. **Shanu vs. Afribank Nig. Plc.** (2002) 17 NWLR (pt.795) 185 of 222 per Uwaifo JSC; Suntai **vs. Tukur** (2003) FWLR (pt.57) 1128 at 1148; **Nwabuoku vs. Onwordi** (2006) 5 SC (pt.111) 103.

Court submitted that the Exhibit I is inadmissible and urged the Court not to accord any weight to it for failure to call the maker of the document. He referred the Court to Section 34 (1) (a) of Evidence Act and the following cases amongst others: **Belgore vs, Ahmed** (2013) 8 NWLR (pt.1355) 60; **Flash Fixed odds ltd. vs. Akatugba** (2001) 9 NWLR (pt.717) page 46 at 63.

On the location of the Idunmwen-Ebo shrine within Egua-Edaiken Area, Learned Counsel contended that the fact has not been proved by the Claimant. On the issue 3, Learned Counsel contended that the evidence of Claimantôs witnesses are inconsistent and contradictory as to the location of the land before and after the boundary settlement in 1976.

He urged the Court to reject the evidence and not to pick and choose which version to believe. He referred to the case of Ayinde Abiodun (1987) 8 WWLR (pt66) page 587 at 595.

He also referred the Court to Exhibit I made by the Claimantsô father and referred to it as an admission against interest. He referred to the case of **Iniama vs. Akpabio** (2008) 17 (NWLR) (pt.116) 225 at 344.

He urged the Court to resolve issue 3 in their favour and dismiss the claim.

For the Claimant, O. O. Erhahon of Counsel proposed 5 issues for determination to be:-

1. Having regard to the totality of the evidence and documents before the Court whether the doctrine of Estoppel per rem judicatam is applicable to this case.

2. Whether Exhibit I is admissible in evidence and is of any probative value.

3. Whether Exhibit I from the totality of the facts before Court amounts to an admission against interest.

4. Whether Exhibit H and H 1 were admissible evidence in this case or and of any probative value.

5. Whether the Claimant from the totality of the facts before Court has proved his case and is entitled to the reliefs sought.

On issue one, Learned Counsel submitted that it is trite that he who asserts must prove. He referred to Section 131 of the Evidence Act 2011 and contended that the Defendant bears the burden to prove by cogent and credible evidence that the case as presently constituted is caught up by the doctrine of estoppels per rem judicata.

Learned Counsel enumerated four conditions to exist for the Claimant to be caught by the doctrine and referred to **Tsokwo Oil and Marketing Co. vs. UTC (Nig.) Plc.** (2002) 12 NWLR (pt. 782) 437 and **Okukiye vs. Akwido** (2001) 3NWLR (pt.700 261. He added that where any of these essential ingredients are missing the plea must fail.

On the issue of parties in the two suits, Learned Counsel drew the Courtôs attention to a letter dated 20/8/81 whereby the sale of the parcel of land measuring 100ft x 100ft was withdrawn and that effectively terminated the relationship prior to the institution of suit no. B/285/81 by Midford. He contended that the letter abrogated the relationship between Midford and Pa Uwensuyi the original Claimant with respect to the parcel of land measuring 100ft x 100ft. He insisted that there was no privity of contract between Midford and Pa Uwensuyi over land measuring 100ft x 100ft and subject matter of suit no. B/258/81 as they were no longer Vendor and Vendee, transferor and transferee or Purchaser and Buyer as contended by the Defendant. He urged the Court to hold that Midford and Uwensuyi were not privies in suit B/258/81 and that Uwensuyi and the Claimant cannot be estopped in this suit.

On the subject matter, Learned Counsel submitted that the subject matter in both suits were not the same. He contended that the two claims are distinct and said the subject matter in the earlier suit forms a part of the extant suit. He referred to **Okukuye vs. Awido** (supra) and **Coker and Anor vs. Sanyaolu** 1976 LPELR ï 877 (SC): 1976 -9 - 10 SC 126.

Counsel submitted that the parties and the subject matter in the two cases are not the same and prayed the Court to hold the doctrine of Estopel per rem judicata is not applicable and asked the Court to dismiss the objection.

On admissibility of Exhibit I, Learned Counsel contended that in law documents are classified into two, public and private documents. He referred to Section 102 and 103 of Evidence Act and the case of **ACN vs. Lamido & Ors.** (2011) LPELR ï 9174 CA. He further contended that Exhibit I is a public document and that it enjoys the statutory presumption of genuiness of public documents and the presumption of

regularity. He insisted that the Defendant has failed to produce any evidence to contradict and/or rebut the presumption that enures in favour of the admissibility of Exhibit I.

He submitted that Exhibit I being a certified true copy of a public document is settled in law and its admissibility is without proof. He referred to the case of **Emecheta vs. Ogueri and anor** (1977) LPELR ï 6249 CA and submitted further that the certificate of a document leaves the Court with no choice but to accept the authenticity of its contents. He referred to **Tabik Investment Ltd. vs. GTB plc** (2011) LPELR 3131 SC and urged the Court to discountenance the argument of the Defendant and resolve the issue in favour of the Claimant.

On whether Exhibit J amounts to an admission against interest, Learned Counsel said Exhibit I was never admitted in evidence in the previous suit and contended that whatever comment was made about it, is an obiter and has no binding authority and cannot be subject to an appeal, referring to the case of **Wilson vs. Osin** (1998) 4 NWLR (pt88) 324 and **Buhari vs. Obasanjo** (2005) 13 NWLR (pt. 941) page 1. He explained that the letter was to withdraw the sale of the portion of land sold to Midford and did not in any way admit that the Defendant is the owner of the land neither did it concede the ownership of the land to him. He urged the Court to hold that the letter does not amount to an admission against interest.

On issue 4, Learned Counsel submitted that that Claimant was not a party to the previous case and Exhibit H is not relevant to this proceedings because the 2 cases are not between the same parties as required by the proviso to Section 46 (1) for Exhibit H to be admissible. He contended that for the Defendant to rely on Exhibit H, witness who they claim are dead or their whereabouts unknown, as evidence in this suit is a

violation of the proviso to Section 46 (1) of Evidence Act 2011. He submitted further that Exhibit H1 is not admissible for the purpose of comparing and contrasting evidence as done by the Defendant in his written address. He referred to the following cases. **Bankole vs. Dada** (2003) 11 NWLR (pt830) 174; **Njoku vs. Dikibo** (1998) 1 NWLR (pt.534) 496 **Oyewinle vs. Aragbaji of Iragbiji** (2012) LPELR 9328 CA.

He submitted that Exhibit H and H1 were not admissible in evidence as provided for by the Evidence Act and urged the Court to expunge Exhibit H and HI from the record of the Court and attach no probative value to same referring to May v. AG Ogun (2008) vol 42WRN 145 and a host of other cases.

On issue 5, Learned Counsel referred to the celebrated case of **Idundun vs. Okumagba & Ors.** (1976) 9 ï 10 SC 140 and the 5 ways to prove title to land. He said that from the facts of the case, the Claimant is relying on 4 ways out of the 5.

Learned Counsel denied that the evidence of the Claimantôs witnesses were contradictory. He went on to say that it is not all contradiction that will result in the rejection of the evidence. But only those that are material and result in a miscarriage of justice and referred to **Egesimba vs. Onuzuruike (**2002) 9 SCNJ46 **Nsirim vs. Nsirim** (2002) 2 SCNJ 46.

Counsel contended that the Defendant did not produce any documentary evidence to show that the land in dispute was within the Egua-Iyoba Plot Allotment Committee at the time of its allocation. He urged the Court to discountenance the evidence of the Defendant as unreliable.

He contended that the Claimantôs case weighs more than that of the Defendant and submitted that the Claimant has proved his case on the preponderance of evidence that he is entitled to the claim before the Court and the reliefs ought.

I have looked at the reply of the Defendant. It is a reply to all the issues raised by the Claimant. That is not the position by our rules. The Defendant is entitled to reply on a point of law raised by the Claimant in his address and not be reply to all the issues which in effect amounts to rearguing his case again. In the circumstance, I will discountenance this process.

The main issue for determination is whether the Claimant from the totality of the facts before the Court, has proved his case and is entitled to the reliefs sought. Before dealing with that it is pertinent to consider the legal issue of estoppels per rem judicatam raised by Learned Counsel for the Defendant as it goes to the jurisdiction of the court.

The Defendant has argued that the Claimant is estopped from bringing this action as it constitutes estoppels per rem judicata.

Generally this principle has long been settled in a plethoria of decisions by the Supreme Court. See particularly the cases of Fadiora vs. Gbadebo (1978) 3 SC 49 at 155 ï 156; Ebba vs. Ogodo (2000) 6 SC (pt.1) 133 at 148 ï 154.

For the doctrine to apply, it must be shown that

(1) The parties;

(2) The issues and

(3) The subject matter in the previous action were the same as those in the action in which the plea is raised.
See the case of Igbeke vs. Okadigbo and Ors. (2013) 22 5LRCN (pt.1) page 38 at 58.

(4) The judgment must have been adjudicated upon by a court of competent jurisdiction.

(5) The judgment must have been conclusive.

The law is that once the above ingredients are established, the previous judgment estopps the party from making claim contrary to the decision in the previous case. See the following cases **Long John vs. Black (**2005) 10SC 1; **Ajiboye vs. Ishola** (2006) 6 ï 7 SC 1; **Balogun vs. Ode** (2007) 1 ï 2 SC 230.

The law is that a Claimant cannot bring an action based on an issue that has been competently and conclusively determined by a Court of competent jurisdiction with certainty and solemnity.

In the light of foregoing, I shall now examine the previous case and the instant one. In the previous suit which is suit no. B/258/81 the parties are Midford Edosomwan and Kenneth I. Ogbeifun.

The present suit has Uwensuyi Edosomwan and Kenneth I. Ogbeifun. (bearing in mind that the Claimant died and was substituted with his son Wilberforce Edosomwan).

The claim of the previous suit against the Defendant is as follows:-

1. A declaration that the Claimant is entitled to the grant of a statutory right of occupancy in respect of the parcel of land measuring 100ft x 100ft situate at Uselu, Ward 23L Egua ï Edaiken, Benin City, which said parcel of land is delineated in pink on the suing plan no MWC/163/82 filed with the Statement of Claim.

2. N2000 being damages for trespasses that on or about 17-7-81 and 9-10-81 the Defendant, his servants and or agents went into the land in peaceful possession of the Claimant committed various acts of trespass dictates of which have been formed above in this Statement of Claim.

3. Order of perpetual injection restraining the Defendant his servants and or agents from committing further acts of trespass on the said land.

The Claim in this suit as earlier stated on the front page of this judgment

1. A declaration that the Claimant is the person entitled to the grant of statutory right of occupancy in respect of a parcel of land measuring approximately 4638.220sq metres 160yards x 160yards situate at Egua-Edaiken in Ward 23L.

2. N1,000 being general damages for trespass

3. Perpetual injunction restraining the Defendant

On the parties, Learned Counsel for the Defendant submits that Midford Edosomwan in the previous suit was a privy of the original Claimant in the instant suit due to the fact that he was a vendee of Uwensuyi Edosomwan. The question now will be is Midford Edosomwan privy to the original Claimant in the instant suit?

Privy is defined in Blacks Law dictionary 8th Edition as ña person having a legal interest of privity in an action, matter or property.

In **Ababio vs. Kanga** (1932) 1 WACA 253 page 254 a privy was defined as that person whose title is derived from and who claims though a party.

I T Mohammed (JSC) in **Agbogunleri vs. Depo & 2 Ors**. (2008) Vol 33 NSCQR page 781 at 804 stated that there are 3 kinds of privies

a) privies in blood, such as testator and heir.

b) Privies in law such as testator and executor or in the case of intestate succession, a successor and administrator.

c) Privies in estate, such as vender and purchaser, lessor and lessee

The case of **Abubakar vs. FMB ltd**. (supra) held that a privy is a person whose title is derived from who claims through a party. There is evidence before this Court that the previous Claimant bought the land in dispute from the original Claimant in the

instant suit who was PW2 in the previous suit. Though in the instant case mention of the Claimant in the previous suit was studiously avoided. The Claimant on the other hand in reply to this issue, implies that the relationship of privy by estate was not in existence at the time Midford filed the action in Court, since the sale of the land to him was withdrawn by Exhibit J which effectively terminated the relationship prior to instituting suit no. B/285/81. (The previous suit).

I think the Learned Counsel is trying to be clever by half, especially as there is nothing in evidence to show that the previous Claimant agreed to the terms in Exhibit J.

Learned Counsel on page 12 of his address said:-

> ñThis letter Exhibit J, a copy of which the Defendant admitted was sent to him, had expressly and unequivocally abrogated the relationship between Midford and Uwensuyi with respect to the parcel of land measuring 100ft x 100fté ò

He posits that in the circumstance, they were no longer vendor and vendee, transferor and transferee or purchaser and buyer.

No evidence was proffered to show that the previous Claimant actually accepted the offer of withdrawal. Are we to just assume that he did? The letter Exhibit J to my mind buttresses the fact that the previous Claimant was a privy to the original Claimant in this suit otherwise why would he arbitrarily withdraw the sale of a land that had been concluded? Even the LTJ after considering the evidence relating to this Exhibit J in the previous proceeding said:-

> ñI reject entirely PW3 suggestion that he caused the letter to be written for him by a solicitor because he was being intimidated or threatened by the defendant.ò

Learned Counsel cannot blow hot and cold. In one breath the witness said he was threatened to write the letter and in another breath Learned Counsel tries to use it to his advantage.

I believe that the previous Claimant bought the land in dispute in that suit from PW2 who is the original Claimant in the instant suit. As a result I find that they have a relationship in estate as vendor and purchaser. I hold therefore that they are privies in estate.

The general principle of the law relating to privy in title is that in transactions relating to land, any person who derives title from or takes an assignment from or is let into possession by or otherwise claims, ñcomes inò under action representator, is bound by the same representation and consequent estoppel, as that which binds such actual representator.

I find that the parties on the principle are for all intents and purposes, the same in both suits. Each party bears the consequences of his predecessor in title and is bound by it. See **Odua vs. Nweze** (1934) 2 WACA 98 **Mohafe vs. Asekhomo** (1993) 8 NWLR (pt.309) 58.

On the issue of the land in dispute in both cases; is it the same land? In the previous suit, the land in dispute which the Claimant bought from PW2, the Claimant in the instant suit is 100ft x 100ft situated at Egua-Edaiken Uselu Ward 23L. While the land in dispute in the instant suit is said to be approximately 4638.220 metres situated at Egua-Edaiken in Ward 23L, Uselu, Benin City.

This dimension has been explained as being 480ft by 480ft. It is not in doubt that the 100ft x 100ft is a small portion of the 480ft x 480ft. I agree that it is a distinction

without a difference as the difference is just the dimension of the land involved. The issue before the previous Court is the ownership of the land and that is the issue before the Court in the instant suit.

Both parties claim ownership of the land and both have produced evidence of such ownership. In considering a plea of Res judicata one of the criteria of the identity of the 2 actions is the inquiry as to whether the same evidence would support both. There is no doubt that the evidence in the previous case would support the instant case. Moreso as the same witnesses were called and where not available, their evidence in the previous case was proffered and tendered in evidence. See the case of **Madukolu and Ors. V Nkemdilim** (1962) 1 ANLR 587.

Looking at the judgment of the previous case, the Lead Trial Judge stated:-

> ñIn short, Plaintiff has not succeeded in showing that the land in dispute is within Egua-Edaiken Ward where the Egua-Edaiken Plot Allotment Committee had jurisdiction to recommend to the Oba for approval for someone requiring a parcel of land.ò

The Court of Appeal in affirming decision of the High Court said:-

> ñWhether taken as a preliminary issue (which was done) or not, the onus to prove the declaration sought is on the appellant and on his failure to discharge same, he can only be entitled to have the claim dismissed.ò

And the Supreme Court in agreeing with the conclusion of the Court of Appeal per Wali JSC stated ñ Even without the oral evidence of PW2 referred to above, the evidence relied upon by the trial Court is enough to sustain its verdictò.

The onus is on a Claimant to satisfy the Court that he is entitled on the evidence brought by him to a declaration of title. The Claimant must rely on the strength of his own case and not on the weakness of the defendantôs case. If the onus is not discharged the

weakness of the defendantôs case will not help him. See **Kodilinye vs. Odu** (1935) 2 WACA 336.

One does not need a magnifying glass to conclude that the reliefs in the previous case and the instant case are substantially the same. They are both tied to the title of the original Claimant in the instant suit. See the case of **Afolabi & Ors & Gov of Osun State & 3 Ors** (2003) 15 NSCQR page 1 where it was held that Estoppel as a defence is to ensure that a litigation which has been prosecuted to conclusion cannot be resuscitated at the instance of a Claimant.

According to Niki Tobi in the above case:-

> ñThe rationale behind this is to make sure that litigation comes to an end and not necessarily reopened to the annoyance of the Defendant and the entire administration of justice or the judicial system. But for the principle of estoppel and the twin principle of res judicata, litigation could not have had an end.ò

The general rule of law is that no person is to be adversely affected by a judgment in an action to which he is not a party because of the injustice in deciding an issue against him in his absence. But this general rule has 2 exceptions, one is that a person who is in privity with the parties, is bound equally with the parties, in which case he is stopped by res judicata, the other is that a person may have so acted as to preclude himself from challenging the judgment in which case he is stopped by his conduct.

In view of the above, I find that the Claimant in this suit is bound by the judgment of the previous case being in privity with the Claimant there. It is necessary to ask whether any judgment I give concerning the land in this suit will affect the land in the previous suit? The answer is in the affirmative.

I therefore hold that the land is the same land in litigation in both suits and is not severable. It is the land and the title to it that was in controversy both suits.

The fourth requirement for a plea of estoppel by judgment to be sustained is that the issue must have been adjudicated upon by a Court of competent jurisdiction. The previous case was adjudicated over by a High Court and went on appeal to the it of Appeal and Supreme Court. A Court is said to be of competent jurisdiction if it is established by law and presided over by a person competent in all respects and has the authority to adjudicate disputes in that Court. It has long been settled that a Court is said to be competent when:-

1) It is properly constituted with respect to the number and qualification of its members and none of the members is disqualified for any reason.

2) The subject matter of the dispute is within its competence and jurisdiction.

3) The action is initiated by due process of law and not in abuse of the Courtôs process and

4) Any condition precedent to the exercise of its jurisdiction has been fulfilled. See Nalsa & Team Ass. Vs. NNPC (1996) 3 NWLR (pt.439) 621.

I hold that the decision in suit B/258/81 of 31/5/84 which was affirmed by the Court of Appeal and then Supreme Court is binding and remains binding on parties to it and all their privies.

The 5th Condition is the conclusive nature of the judgment. It stands to reason that the previous suit was concluded. I do not think this issue is in contention.

From the foregoing it is clear that the principle of Res Judicata avails the Defendant. I do not believe there is any need to hereafter consider the other issues raised by the Counsel to the parties as they have become academic. When a point becomes academic it means that it has no real relevance or effect. The Courts have discouraged

such indulgence because their outcome would neither confer benefit nor injure any of the parties but merely expose or expound the law.

Consequently I find that issue one of the Defendants is resolved in his favour. This case is accordingly dismissed.

EFE IKPONMWONBA
JUDGE

O. O. ERHAHON FOR THE CLAIMANT

E. F. OSIFO FOR THE DEFENDANT