IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON WEDNESDAY THE
23RD DAY OF SEPTEMBER, 2020.

BETWEEN: SUIT NO: HCU/5/2020

MRS. ANGELA ORIAFOH OKOJIE …… …… …..……. ……..……CLAIMANT
(Suing through her Lawful Attorney,
Mr. Benjamin Oriafoh)

AND

1. MR. MICHAEL OKOSUN ……..……DEFENDANTS
2. MRS. GRACE OKOSUN

RULING

This is a Ruling on a Preliminary Objection filed by the Defendants dated on the 10th of June, 2020 challenging the jurisdiction of this Court to entertain and determine this suit upon the following grounds:

1. That the subject matter of this suit has earlier on been decided between the defendants and the claimant's privy, Sunday Oriafoh in Suit No: HCU/56/2012;
2. That the judgment in Suit No: HCU/56/2012 delivered on the 19th of June 2014 which finally determined the rights of the parties in respect of the subject matter of this suit, remains binding and subsisting having not being appealed against;
3. That this Honourable Court is functus officio as it cannot sit on appeal over its judgment in Suit No: HCU/56/2012 which borders on the same issues, subject matter and parties as in the instant suit; and
4. That this Honourable Court has no jurisdictional competence to entertain and determine the subject matter of this suit which has been adjudicated upon in Suit No: HCU/56/2012 between same parties, subject matter and issues.

The Notice of Preliminary Objection is supported by an affidavit of 28 paragraphs and a Written Address of counsel. Upon receipt of the Notice, the learned counsel for the Claimant filed a Counter-Affidavit of 19 paragraphs and a Written Address of counsel.

In his Written Address, the learned counsel for the Defendants, ***Dr. P.E.Ayewoh-Odiase*** formulated three Issues for Determination as follows:

1. ***Whether this Honourable Court has jurisdiction to entertain the subject matter of this suit which was earlier on decided by this Honourable Court?***
2. ***Whether this Honourable Court having finally determined same issues between the parties in this suit in Suit No: HCU/56/2012, is not functus officio?***
3. ***Whether this Honourable Court can sit on appeal over its earlier decision in Suit No: HCU/56/2012 which borders on the same parties, issues and subject matter in this suit?***

Thereafter, the learned counsel articulated his arguments on the issues seriatim

ISSUE ONE:

On issue one, the learned counsel submitted that this Court has no jurisdictional competence to entertain and determine this suit. He further submitted that the parties in this suit and Suit No: HCU/56/2012 are the same. That while Michael Okosun, the current 1st defendant who was the claimant in Suit No: HCU/56/2012, instituted the said suit through his Lawful Attorney, the 2nd defendant in this suit, Sunday Oriafoh, the father of the current claimant, was the defendant in Suit No: HCU/56/2012. He therefore submitted that Sunday Oriafoh, now listed as a witness in this suit is the claimant's privy. On the meaning of Privy, he cited the case of ***Agbogunleri V Depo (2008) 18 WRN page 1 at P. 20 lines. 15 – 35.***

Counsel submitted that the subject matter of Suit No: HCU/56/2012 and the current suit, are one and the same, being a parcel of land/building lying and situate at No. 4 Aboiralor Street, Uromi. Furthermore, that the issue that was resolved in the earlier suit, which revolves around ownership of the said land/building is the same in the current suit.

He submitted that the judgment in Suit No: HCU/56/2012 is valid, subsisting and final as same was delivered by this same Court which is a Court of competent jurisdiction. He therefore submitted that this current suit, has been caught by the principle of *estoppel per rem judicatam.* He referred the Court to the case of ***Akayepe V Akayepe (2009) 111 NWLR part 1152 page 217 at Pp. 243-244, paras. E-A*** where the Supreme Court listed the ingredients of res judicata, as follows:

(a) That the parties or their privies, as the case may be, are the same in the present case as in the previous case;
(b) That the issue and subject matter are the same in the previous case or suit as in the present suit;
(c) That the adjudication in the previous case, was given by a Court of competent jurisdiction; and
(d) That the previous decision finally decided the issues between the parties".

He also cited the following cases: ***Adeniran V Ashabi (2004) 2 NWLR, part 857 page 375 at Pp. 405 – 406, Paras H;*** and ***Edward V Kiri (2006) 1 N.W.L.R. part 962, page 569 at P. 579, paras. B – D.***

Learned counsel submitted that where estoppel *per rem judicatam* has been successfully raised as in the instant case, it ousts the jurisdiction of the Court to entertain the matter and cited the case of ***Zubair V. Kolawole (2019) Vol. 293 LRCN, Page 40 at page 78 PEE.***

He submitted that a perusal of the judgment in the previous suit as well as the ruling in the previous suit together with other court processes in the previous suit, clearly shows that the subject matter of this suit has been previously litigated upon so the claimant is estoppel at this stage from re-

litigating on it. He referred to the case of ***Aderonpe V Eleran & Ors (2019) Vol. 289 LRCN, page 77 at page 105 AP*** where the Supreme Court held as follows:

> ***"The Principle of estoppel by conduct has been codified as Section 151 of the Evidence Act, 1990 LFN (now section 169 Evidence Act, 2011). The doctrine of estoppel in Central London Property Trust Ltd V High Trees House Ltd. (1947) KB 130 – the High Trees Case, and Combe V Combe (1951) 1 ALLE.R 769, operates thus – when one person has, either by virtue of an existing judgment, deed or agreement, or by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceeding between himself and such person or such persons representative in interest to deny the truth of that thing".***
> ***In Adeyefa & Ors V Bamgboye (2014) L.R.C.N. page 32 at page 55 KP, Ngwuta J.S.C. defined estoppel per rem judicatam thus:***
> ***"Estoppel per rem judicatam is a rule of evidence whereby a party or his privy is precluded from disputing in any subsequent proceedings, matters which had earlier been adjudicated upon previously by a Court of competent jurisdiction between him and his opponent. Apart from other conditions upon which the application of the doctrine is contingent, the judgment relied on as estoppel must be delivered by a Court of competent jurisdiction".***
> ***In Ajayi V Olowu (2010) 15 WRN page 152 at P. 172 lines. 40 – 45, the Court of Appeal held that the rationale for the plea of res Judicata is founded on the principle that a party is precluded from contesting the contrary of any precise point which has once been distinctly put in issue and with certainty, determined.***

He therefore submitted that the above authorities are on all fours with the facts and circumstances of this case and urged the Court to resolve issue one in the negative.

ISSUE TWO:

On issue two, learned counsel submitted that this Court fully determined the issue of ownership of the land/building in dispute in this suit in the previous suit and made some findings. He further submitted that where a Court has reached a final decision in respect of a matter as in the instant case, it becomes *functus officio*. He referred to the case of ***First Bank of Nigeria PLC V T.S.A. Industries Ltd (2010) 38 WRN Page 1 at page 31 ratio 22*** where the Supreme Court defined the phrase ***"functus officio"*** thus:

> ***"A task performed, fulfilling the function, discharging the office or accomplishing the purpose and thereby becoming of no further force or authority?***

He submitted that this Court had already made far reaching findings in its earlier judgment that the claimant's privy, Sunday Oriafoh who was the defendant in the previous suit, chose to shun the proceedings of this Honourable Court. Furthermore, he posited that this Court also found as a fact that J.E. Enaholo Esq., the defendant's Counsel in the said suit, now a witness in the current suit, filed a memorandum of appearance in the said suit. He said that the above findings are corroborated by Exhibits "BB" and "EE" the ruling of this Court both in respect of the application to set aside the findings of this Court which he said revealed that Sunday Oriafoh, the defendant in the previous suit, rather than defend the said suit, went about harassing the claimants in the previous suit, with policemen. See Exhibit "EE". He said that in Exhibit "BB", this Court

specifically found as a fact that J.E. Enaholo Esq. entered appearance for Sunday Oriafoh and disbelieved the denial of Enaholo Esq. that he did not file any memorandum of appearance in the previous suit.

Again he posited that this Court also found as a fact that the land/building belongs to the 1st defendant and therefore restrained Sunday Oriafoh, his servants, privies and workmen from further encroaching into the land in dispute. He said that all the aforesaid findings were not appealed against by the defendant in the previous suit or the claimant in this suit as an interested party. He referred to the case of ***Awolola V Governor of Ekiti State (2019) Vol. 293 LRCN page 171 at page 199 KU*** where the Supreme Court held that a finding of a Court against which there is no appeal, is treated as admitted. See also the case of ***Zubair V Kolawole (2019) Vol. 293 LRCN page 40 at page 79 FU*** where the Supreme Court also held thus:

> ***"The findings of a Court are binding and subsisting between the parties in the absence of an appeal".***

Counsel therefore submitted that having concluded the previous suit and disposed of all issues relating to the ownership of the land/building which is the subject matter of this suit, this Court lacks the jurisdiction to entertain the present suit. On the importance of jurisdiction to adjudication, he cited the case of ***Aladegbemi V Fasanmade (2010) 21 WRN page 131 at Pp. 175-176, lines 45 – 5.***

He urged the Court to resolve issue two in the affirmative.

ISSUE THREE:

On issue three, learned counsel submitted that entertaining the claimant's claim as constituted, will amount to sitting on appeal by this Honourable Court over its own decision. He further submitted that since the defendant in the previous suit made an unsuccessful attempt to have the suit set aside, the only option open to him was to appeal against the ruling of the Court and not to file a fresh suit on the same subject matter through his daughter who was very much aware of the previous suit but chose to stand by and watch the battle from a comfortable distance. He referred to the case of ***Obineche V Akusobi (2010) 38 WRN, page 117 at Pp. 134 – 135 lines 35 – 15*** where the Supreme Court made some pronouncements on the principle of estoppel by conduct as follows:

> ***"A party who knew of but took no part in previous proceedings, is bound by the decision in those proceedings. Nnamani, JSC (of blessed memory) in the case of Oke & Anr V Atoloye & ors. (1986) NSCC Vol. 17 (Pt 1) 165; (1986) 1 NWLR (Pt. 15) 241 held that:***
> ***"It is trite law that estoppel stretches beyond estoppel per rem judicatum to estoppel in pais, estoppel by deed, estoppel by negligence etc, more relevant to the present proceedings is estoppel by conduct. Again and perhaps even more relevant to the present proceedings, if a party stands by and allows another to fight his battle in a litigation which touches on his interest, he cannot be heard later to complain".***

Counsel submitted that when a Court has reached a decision and made findings in respect of the subject matter of litigation as in the instant case, it cannot sit on an appeal over its own judgment for the purpose of reviewing same. See the case of ***Bounwe V Resident Electoral Commissioner, Delta State (2006) I NWLR part 961, 286 at 315 paras. E – G.***

He further submitted that the duty to review the decision of a Court rests squarely on the Court of Appeal and not the Court that delivered the judgment or a Court of coordinate jurisdiction. He referred to the case of ***Seven-up Bottling Company PLC V Abiola & Sons Bottling Company Ltd***

(2001) 38 WRN, page 55 at Pp. 75 – 77 lines 35 – 10 where Onnoghen JCA as he then was, held as follows:

> ***"Therefore I agree with the learned Senior Advocate for the defendants that by filing a fresh action as did the plaintiff, she was inviting this Court to review the decision of another Court of co-ordinate jurisdiction which is a taboo and was thus acting recklessly with a dose of frivolity. Indeed, the plaintiff's action is disingenuous and misleading as calculated to pervert justice, a piece of conduct which the Court looks with disfavor".***

He submitted that asking this Honourable Court to review or re-hear a matter it has already decided will amount to an academic exercise which this Honourable Court cannot embark upon. See the case of ***Arabella V Nigeria Agricultural Insurance Corporation (2008) 32 WRN, page 1 at P. 25 lines 20 – 25.*** He finally urged this Court to resolve issue three in the negative.

In conclusion, he urged the Court dismiss the Claimant's suit in its entirety with substantial costs for want of jurisdiction.

In his Written Address in opposition to the Preliminary Objection, the learned counsel for the Claimant ***Prof. A.A.O.Ekpu*** formulated a sole Issue for Determination as follows:

Whether the Defendants have made out a case to justify a striking out/dismissal of the Claimant's case at this stage of the proceedings?

Learned counsel commenced his arguments by submitting that the Defendants have not proved the grounds for their preliminary objection to this suit. He observed that even though the Defendants listed four different grounds for their objection, a close look at the grounds shows that they are essentially based on the sole ground that the matter in dispute in this case had previously been decided in Suit No. HCU/56/2012. Therefore, the objection is one predicated on the ground of estoppel *per rem judicatam*.

He submitted that the ground for objection is not apparent on the face of the Claimant's originating processes. That being so, the Defendants are required to file their pleadings before raising any issue of law against the competence of the action in their defence. He said that what the Defendants have done by this objection amounts to a demurrer, which has been abolished by the Rules of this Honourable Court vide ***Order 22 Rules 1 and 2 of the High Court (Civil Procedure) Rules, 2018.***

He submitted that the principle of res judicata is a special defence which is required to be pleaded if it must be relied upon and in the absence of pleadings by the Defendants, they cannot rely on the principle at this stage of the proceedings. He therefore urged the Court to dismiss the objection and order them to file their defence based on the case of ***ODI V. IYALA (2004) LPELR-2213 (SC)*** where ***Niki Tobi J SC*** held thus:

"Is brief the forum to raise the special defence of estoppel per rem judicatam? I think not. The case must be made out in the pleadings before argument can be taken on it in the brief on appeal. The law is elementary that estoppel per rem judicatam is a special defence available to a defendant, which must be specifically pleaded in the statement of defence. See Egbe v. Adefarasin (1987) 1 NWLR (Pt. 47) 1; Sosan v. Ademuyiwa (1986) 3 NWLR (Pt. 27) 241; Oshodi v. Eyifunmi (2000) 13 NWLR (Pt. 684) 298."

Similarly, learned counsel referred to the case of ***JIMOH V. AKANDE (2009) All FWLR (Pt. 468) 209 at pp. 231-232*** where the Supreme Court restated the law as follows:

"In this regard the principle of res judicata could be raised many a time in limine by the Defendant to show that the Plaintiff is re-litigating an issue or issues in the present suit, which have been finally and conclusively decided on the merits in a previous suit (which is earlier in

time), between the same parties and their privies by a Court of competent jurisdiction. The Defendant is enjoined to plead these facts if the principle of res judicata is to be relied upon."

Finally on this point he referred to the dictum of ***Omokri, JCA*** in the case of ***USUNG V. NYONG (2010) All FWLR (523) 1966*** where he stated as follows:

"Estoppel should be particularly pleaded, this was not done in the instant case on appeal. A plea of estoppel must be clearly and specifically pleaded or else it must be so apparent that the Court has a duty to consider it."

On the merits of the objection, counsel submitted that the Defendants have woefully failed to establish their grounds of objection. He said that the conditions for the application of the principle of *res judicata* are well established. He referred to the case of ***EZEOKONKWO V. OKEKE (2002) LPELR-1211 (SC)*** where the Supreme Court stated as follows:

"In this regard, the law is firmly established that for the plea of estoppel per rem judicatam to succeed, the party relying on it must prove that:

1. the parties or their privies are the same in both the previous and present proceedings.

2. the claim or the issue in dispute in both proceedings is the same.

3. the res or subject matter of the litigation in the two cases is the same.

4. the decision relied upon to support the plea of estoppel per rem judicatam must be valid, subsisting and final; and

5. the court that gave the previous decision relied upon to sustain the plea must be a court of competent jurisdiction .

Unless the above pre-conditions are established, the plea of estoppel per rem judicatam cannot be sustained. See Oke v. Atoloye (1986) 1 NWLR (Pt. 15) 241 at 260; Yoye v. Olubode and Others (1974) 1 All NLR (Pt. 2) 118 at 122; Fadiora v. Gbadebo (1978) 3 SC 219 at 229. …

Once they are established, such previous judgment is conclusive and estops the plaintiff from making any claim contrary to the decision in the previous judgment. I should also add that it is a question of fact whether or not the parties and their privies, the facts in issue and the subject matter of the claim are the same in both the previous and the present cases. The burden is on the party who sets up the defence of res judicata to establish the above pre-conditions necessary to sustain the plea."

Learned counsel maintained that each of these requirements must be proved and it is not a matter to be drawn by inferences. That once any of the requirements is not proved, the defence of res judicata may be at large and is inapplicable. See the case of ***Jimoh v. Akande, supra.***

He submitted that these conditions have not been satisfied in this case. He submitted that the parties in Suit No. HCU/56/2012 and the present case are not the same. That only the 1st Defendant features in the two cases. That the 2nd Defendant only featured as the 1st Defendant's attorney. That the Claimant herein did not feature in the earlier suit in any capacity at all and she was neither a party nor a privy nor a witness in the matter.

He said that the Applicants have barely asserted that the Claimant herein is a privy to Sunday Oriafoh, the Defendant in the earlier suit without showing how the relationship arose. He said that they did not also show that the Claimant knew about Suit No. HCU/56/2012 while it was pending. He referred to the case of ***AGBOGUNLERI V. DEPO (2008) All FWLR (Pt. 408) 240***, where a privy was defined as a person whose title is derived from and who claims through a party. He said that the processes before the court do not show that the Claimant is claiming title through Sunday Oriafoh but that she purchased the land in dispute from the Defendants. He submitted that

Sunday Oriafoh was never in the line of succession and on this score alone, the objection should fail.

Furthermore, he submitted that the issues in the two cases are not the same. That it is not enough that a particular land forms the subject matter. That the questions to be resolved must also be the same. For this view, he referred to the decision in ***AGBONMAGBE V. C.F.A.O. (1966) All NLR 130, OLUKOGA V. FATUNDE (1996) LPELR-2623 (SC)*** where the Supreme Court held that a previous litigation for compensation over land is not the same as a subsequent suit for declaration of title to the same land.

He posited that in the instant suit, the Claimant is claiming *inter alia* for mesne profit or for breach of contract of sale of land and for money had and received. He said that these issues were not decided or considered in the earlier case. He therefore submitted that the judgment in Suit No. HCU/56/2012 cannot be used as a basis for a plea of estoppel in this case.

Finally, he submitted that this objection is also doomed to fail on the ground that the Applicants failed to exhibit the required materials to enable the court decide whether the previous case can ground a plea of *res judicata*. He submitted that the proceedings in Suit No HCU/56/2012 are necessary to enable the Court to fully appreciate the nature of the case and the parties thereto. That the Applicants only attached an inadmissible copy of the judgment which he contended is not sufficient in the circumstance. He pointed out that the judgment which they exhibited is not a certified true copy and therefore cannot be relied upon. He said that the judgment in a previous case to be relied on for *res judicata* must be an admissible copy. He referred to the case of ***OLUKOGA V. FATUNDE (1996) LPELR-2623 (SC),*** where ***Adio, JSC*** delivering the lead judgment of the apex court held as follows:

"The appellants did not produce the certified copy of the judgment of the appellate court to enable the court to know the result of the appeal. Where a party relies on a plea of res judicata or issue estoppel, the burden is on him to produce an admissible copy of the judgment for the purpose of sustaining the plea …"

He also relied on the cases of ***USMAN V. KUSFA (1997) LPELR-3429 (SC)*** and ***ONOBRUCHERE V. ESEGINE (1986) LPELR-2688 (SC)***.

In conclusion, he urged the Court to dismiss the preliminary objection with substantial costs.

Upon receipt of the Claimants Counter Affidavit and Written Address in opposition to the Preliminary Objection, the Defendant filed a Further Affidavit in Reply and a Written Reply on Points of Law.

In his Reply on Points of Law learned counsel for the Defendant submitted that the definition of privy, extends to blood relations as in the instant case. See the case of ***Lawal V Salami (2002) F.W.L.R. part 87, page 638 at (P. 661, Paras. D – E).***

On the issue raised by the claimant's counsel that the issues in both cases are not the same, he submitted that the case of ***Olukoga V Fatunde (1996) LPELR – 2623(SC)*** relied upon by claimant's counsel is not applicable to the facts of this case on the ground that unlike in the Olukoga case (Supra), where the issues in both cases were different, the case at hand borders on title to the same piece/parcel of land. See the case of ***Azazi V Adhekegba (2010) 3 WRN page 145 at (P. 164) lines. 5.***

On the submission that the judgment in Suit No: HCU/56/2012 is inadmissible he submitted that the omission of the Court Registry cannot be visited on the defendants/applicants and cited the case of ***Anyanwoko V Okoye (2010) 18 WRN page 34 at (P. 56) lines. 15 – 20.***

He further submitted that the Court can take judicial notice of its processes including Exhibit "AA", the judgment in Suit No: HCU/56/2012.

At the hearing of this application, the learned counsels for the parties made some further oral submissions. In his further submissions, Dr. Ayewoh Odiase submitted that failure to certify Exhibit AA is the fault of the Registry. He posited that a Litigant cannot be penalized for the omission of Court officials and he cited the case of ***ANYANWOKO V OKOYE (2010) 18 WRN 34 at 56***. That by the combined effect of ***section 59 and 62 of the Evidence Act, 2011*** the Court can dispense with the issue of certification because the existence of Exhibit AA is a fact in issue. Furthermore that by the provision of ***section 122(4) of the Evidence Act*** this Court can take judicial notice of all its processes including judgment delivered by this Court.

Learned counsel referred to the case of ***JUKOK INTERNATIONAL LTD V DIAMOND BANK PLC 2015 7 WRN 1 at 50 lines 30 - 40*** where the Court held that it is bound to take judicial notice of all the processes filed in a matter before it. He submitted that in respect of documents attached to an affidavit, it would be superfluous to certify them. See ***JUKOK INTERNATIONAL supra***.

Finally on the essence of *estoppel per rem judicatam*, he submitted that a party does not only mean a person named as such but also includes any other person who being cognizant of the proceedings allowed his battle to be fought by some other person with the intention of taking the benefit of the contest. See ***AYENI V ELEPO (2007) 2 FWIR (Pt. 3713383 at 3404***. He said that the previous judgment being on the same subject matter and being a final judgment, the Court should uphold this Preliminary Objection.

In his further submissions, ***Prof. A.O.0. Ekpu*** informed the Court that he just became aware that the Defendants had filed their Statement of Defence since March 2020 so he was abandoning the issue of demurrer.

Furthermore, he submitted that the conditions to establish *estoppel per rem judicatam* have not been met. That the parties are not the same because the Claimant herein did not feature in any capacity in the previous case and the Defendant in the previous case who is the Claimants father is not in the line of succession to the property in dispute. Furthermore, he said that the present Claimant is not claiming through her father. He referred to paragraph 8 of their further affidavit where the defendant alleged that they borrowed money from the Claimant while the Claimant in paragraph 11(f) of the counter-affidavit said that she did not lend money but that she bought the property. See ***OLUKOGA V FATUNDE (1996) LPELR 2623 SC***.

He urged the Court to allow this matter go on to trial in the interest of justice because it will be inequitable at this stage to prevent the Claimant from recovering her money even if there is any problem over the land.

After this matter was adjourned for Ruling on the Preliminary Objection, the learned counsel for the Claimant submitted a letter dated 9th of July, 2020 forwarding some additional authorities. A copy of the letter was forwarded to the learned counsel for the Defendant. In the said letter, the counsel referred the Court to some further authorities on the admissibility of a public document and the conditions to sustain the plea of *estoppel per rem judicatum*. The further authorities are as follows: ***BAYAWO V NDLEA & ORS (2018) LPELR-45030 (CA); KANO STATE HOUSE OF ASSEMBLY V UMAR (2014) LPELR-24008 (CA); USMAN V KUSFA (1997) LPELR-3429 (SC); and OKUNGBOWA V GOV. OF EDO STATE (2014) LPELR-22135 (CA).***

I have carefully considered all the processes filed in this application, together with the arguments of the learned counsel for the parties.

Upon a careful consideration of the Issues for Determination formulated by the parties, I am of the view that the issues formulated by both parties are quite germane to the determination of this application. However, I am of the view that the preliminary objection is essentially on the issue of *estoppel per rem judicatam*. I will therefore resolve the objection on a sole issue for determination which is as follows:

Whether the judgment in Suit No: HCU/56/2012 delivered on the 19th of June 2014 constitutes estoppel per rem judicatam to the present suit?

The doctrine of ***estoppel per rem judicatam*** is a Latin maxim which connotes that where a Court of competent jurisdiction has settled by a final decision, the matter in controversy between the parties in an action, the said parties or their privies cannot re-litigate that matter again by bringing a fresh action. See the cases of: ***Adigun Vs. AG, Osun State & Ors. (1995) 3 NWLR (Pt. 385) p. 513 at 533-534; and Osunrinde vs. Ajamogun (1992) 6 NWLR (Pt. 246) p. 156 at p. 183***.

The rationale behind the doctrine was long ago underscored by ***Aniagolu JSC*** (of blessed memory) in the case of: ***Aro vs. Fabolude (1983)1 SCNLR p.58*** where he stated thus:

"There must be an end to litigation. Parties are not permitted to bring fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If those were permitted, litigation would have no end except when legal ingenuity is exhausted."

Blacks Law Dictionary Eighth Edition defines res judicata as:

"A thing adjudicated. In other words, the phrase means an issue that has been definitely settled by judicial decision. It is an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions that could have been, but was not, raised in the first suit. Generally, estoppel means a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true. A bar that prevents the re-litigation of issues .Therefore, estoppel per rem judicatam is a doctrine barring a party from litigating an issue determined against that party in an earlier action."

See ***pages 1336 to 1337 and 589 of Blacks Law Dictionary (supra***). See also the following cases: ***(1) Cole v. Jibunoh (2016) LPELR-40662 (SC); (2) Tukur v. Uba (2013) 4 NWLR (Pt. 1343) p. 90; (3) Makun v. FUT Minna (2011) 18NWLR (Pt. 1278) p. 190 and (4) Balogun v. Adejobi (1995) LPELR-724 (SC).***

Thus, it is settled law that based on the doctrine of ***res judicata***, where a Court of competent jurisdiction has settled, by a final decision the matters in dispute between the parties, none of the parties or his privies may re-litigate that issue again by bringing a fresh action.

It is settled law that the application of the doctrine of ***estoppel per rem judicatam*** is based on four conditions which ***must exist cumulatively*** for the plea to be successful. The conditions are as follows:

1. The parties must be the same in the earlier action as in the second action;

2. The issue or subject-matter must be the same in the earlier action as in the second action;

3. The judgment or decision in the earlier action must be a final one; and

4. The Court which adjudicated upon the earlier suit must possess the requisite jurisdiction over the suit.

See the following decisions on the point: ***(1) Manson Vs. Halliburton Energy Services Ltd (2007) 2 NWLR (Pt. 1018) p. 211 at p. 243; (2) Makun Vs. F. U. T. Minna (supra); (3)***

Madukolu Vs. Nkemdilim (supra) and (4) Omokhafe Vs. Esekhomo (1993) 8NWLR (Pt. 309) p.58 at p.68.

In the present application, it is not in dispute that the judgment in the previous suit was a final one. Again, there is no doubt that the Court possessed the requisite jurisdiction when it adjudicated upon the previous suit.

However the bone of contention in this application is whether the parties and the issues are the same.

At this stage, the Defendants are contending that the parties in this suit and Suit No: HCU/56/2012 are the same. That while Michael Okosun, the current 1st defendant who was the claimant in Suit No: HCU/56/2012, instituted the said suit through his Lawful Attorney, the 2nd defendant in this suit, Sunday Oriafoh, the father of the current claimant, was the defendant in the earlier suit. They maintain that Sunday Oriafoh, now listed as a witness in this suit is the claimant's privy. However, the Claimants have vehemently disputed these assertions. The issue which I must therefore resolve is whether the parties and the issues are the same.

Before I resolve the issue, there is an ancillary issue which needs to be addressed. In his affidavit in support of the preliminary objection, the Defendants exhibited a copy of the judgment in Suit No. HCU/56/2012 as Exhibit AA. Curiously, the said judgment is a photocopy which was not certified. The learned counsel for the Defendants tried to argue that the non-certification was the fault of the Court Registry and that the party should not be sanctioned for the fault of the court. In the alternative he has urged the Court to take judicial notice of the judgment pursuant to ***section 122 of the Evidence Act, 2011.***

It is an indisputable fact that Exhibit AA is an uncertified photocopy of a public document. It is trite law that an uncertified copy of a public document is inadmissible in law as secondary evidence of the contents of the original document. See: ***Section 90(1) C of the Evidence Act, 2011;*** and the following decisions on the point: ***ENEJI v. STATE (2013) LPELR-20393(CA);*** and ***NORTHWEST ENERGY NIGERIA LIMITED & ANOR v. IBAFON OIL LIMITED (2014) LPELR-24133(CA).***

I am of the view that it was the paramount duty of learned counsel for the Defendants to ensure that the aforesaid judgment was duly certified, more so since it was the fulcrum of his preliminary objection. The invitation for the Court to take judicial notice of the judgment must be considered with great caution. In the case of ***ANSA & ORS v. UAC & ANOR (2014) LPELR-23522(CA)***, the Court of Appeal cautioned thus: ***"Judicial notice does not and cannot require a Court to go in search of the fact to be judicially noticed. If that were the case it will be almost impossible of achieving. How, for instance, will a Court be expected to go in search of the Judgment of a Court in say Ghana or Australia which I am also enjoined to take Judicial notice of ? The judgment of the relevant Court has to be brought into Court by the party seeking to rely on it for it to be judicially noticed."***

Where as in the instant case the judgment has not being certified I wonder whether it can be said to have been brought into the Court to enable the Court to take judicial notice of same. However, in the absence of the aforesaid judgment, this application will be bereft of relevant facts to enable me determine whether the parties and the issues are the same. In order to determine the merits of the objection, I will be constrained to take judicial notice of the judgment in order to access the relevant facts from the uncertified judgment.

Upon a careful examination of the parties in Suit No. HCU/56/2012 and the present case, it will be observed that while the Claimant in Suit No. HCU/56/2012 is the 1st Defendant in the present suit, the Defendant in the former suit (Sunday Oriafoh) is not a party to the present suit.

Only the 1st Defendant features in the two suits. The 2nd Defendant in this suit only featured as the Claimant's attorney in Suit No. HCU/56/2012. The Claimant in the present suit did not feature in any capacity whatsoever in the previous suit.

However in their affidavit in support of the preliminary objection, the Defendants have vehemently maintained that the Claimant herein is a privy to Sunday Oriafoh, the Defendant in the previous suit. But in the counter affidavit in opposition to the objection, the Claimant denied being a privy to Sunday Oriafoh.

At this stage of the proceedings it will be difficult to make any finding on this issue of privity without taking oral evidence which will be tested by cross-examination. In the case of ***AFRICAN SONGS LTD & ANOR v. KING SUNNY ADE (2018) LPELR-46184(CA)*** the Court of Appeal exposited thus: ***"…it has become imperative since the introduction of written statement of oath as evidence in chief in civil proceedings that cross examination is now the real test of the veracity of witnesses. The reason being that most written statement of oath nowadays are mere replica of the pleadings of the parties. It is thus by the cross-examination evidence that the true worth of the evidence of a witness is ascertained."***

Furthermore, as the learned counsel for the Claimant pointed out, the Defendants have barely asserted that the Claimant herein is a privy to the said Sunday Oriafoh, without showing how the relationship arose. Also, there is nothing to establish the fact that the Claimant was aware of Suit No. HCU/56/2012 while it was pending. Sequel to the foregoing, I am unable to make any finding to the effect that the Claimant herein is a privy to Sunday Oriafoh, the Defendant in the previous suit.

In view of the uncertainties surrounding the status and the identity of the present Claimant, I am of the view that the Defendants have not established the first condition that the parties in the previous suit are the same as in the present suit. As earlier stated in this ruling, ***the four conditions must exist cumulatively for the plea of estoppel per rem judicatam to be successful.***

Furthermore on the requirement that the issue or subject-matter in the previous suit must be the same in the present suit, as the Claimant's counsel rightly pointed out, in the instant suit, the Claimant is claiming *inter alia* for mesne profit for the unauthorized use of the house. Clearly, the issue of mesne profit was never canvassed nor determined in the previous suit. Thus, the issues in the two suits are not exactly the same.

In the event, the Defendant has failed to establish two of the conditions to sustain the plea of ***estoppel per rem judicatam***.

Consequently, ***the sole Issue for Determination is resolved in favour of the Claimant. The preliminary objection is accordingly dismissed with N40, 000.00 (forty thousand naira) costs in favour of the Claimant.***

P.A.AKHIHIERO
JUDGE
23/9/2020

COUNSEL:
Prof. A.O.O. Ekpu……..……CLAIMANT

DR.P.E. Ayewoh-Odiase…….....DEFENDANTS