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
6TH DAY OF FEBRUARY, 2019.

BETWEEN: SUIT NO: HCU/37/2018

MR. PATRICK-ANTHONY E. OKO ----------CLAIMANT/RESPONDENT

AND

MR. JOSEPH EDOHAMEN OMONUA ----------DEFENDANT/APPLICANT

RULING

This is a Ruling on an application brought pursuant to Order 22 Rule 3; Order 37 Rules 1 & 2 of the Edo State High Court Civil Procedure Rules (2012) and under the inherent jurisdiction of this Honourable Court. The motion is praying the Court for an order dismissing this suit on the grounds of ***estoppel per rem judicatam***.

AND for such other order or orders as this Honourable Court may deem fit to make in the circumstances of this case.

The grounds for bringing the application are as follows:

(i) That the subject matter of this Suit has been the subject of litigation in Suit No: HCU/17/2014 between the Defendant in this case as Claimant in the previous suit and the agent and privies of the Claimant in this case as Defendant in the previous case; and
(ii) That the Claimant in this case was privy to the course of action in Suit No: HCU/17/2014.

The application is supported by a four paragraphs affidavit. Attached to the affidavit in support of this motion are: a letter the Defendant's Counsel wrote to the Claimant who the Defendant classified as an unknown Unogbo man and the Claimant's alleged agent, Mr. Henry Okoh; a copy of the originating writ in Suit No: HCU/17/2014; and the final judgment in the said suit.

The application is also supported by a Written Address of the Applicant's counsel.

Upon receipt of the Motion, the learned counsel for the Claimant/Respondent filed a Counter-Affidavit and a Written Address of counsel.

In his Written Address, the learned counsel for the Defendant/Applicant, J.I.Erewele Esq. formulated two Issues for Determination as follows:

1. ***Whether the existence of an Agent, in this case, Mr. Henry Okoh who the Defendant found on the land in dispute does not infer or create a corollary that there is a Principal elsewhere who is Privy to all the acts of the Agent, in this case, Mr. Henry Okoh; and***
2. ***Whether the final judgment in HCU/17/2014 between Pa. Joseph E. Omonua and Mr. Henry Okoh does not constitute a bar or estoppel per rem judicatam to this suit.***

In his Written Address, the learned counsel argued the two issues *seriatim*.

ISSUE 1:

Whether the existence of an Agent, in this case, Mr. Henry Okoh who the Defendant found on the land in dispute does not infer or create a corollary that there is a Principal elsewhere who is privy to all the acts of the Agent, in this case, Mr. Henry Okoh.

Arguing this issue, learned counsel submitted that if by operation of contract or a Deed, an Agent, in this case, Mr. Henry Okoh comes into existence, the natural corollary is the existence of a Principal. He posited that it is the existence of a Principal that creates an Agent. On this point, he referred the Court to paragraph 3(iii) to paragraph 3(xiii) of the affidavit in support of this motion and contended that the Claimant was the Principal of Mr. Henry Okoh because when the Defendant visited the land in dispute in 2014, Mr. Henry Okoh told the Defendant that he was sent to the land to work by his senior brother who Mr. Henry Okoh refused to name and that was why the Defendant called the unnamed man an ***unknown Unogbo man***.

He particularly referred the Court to paragraphs 3(iii) and urged the Court to hold that the admission by Mr. Henry Okoh that he was sent to the land in dispute by his senior brother implies that there is a Principal who is the Claimant in this suit.

Learned counsel referred to ***Black's Law Dictionary, Eight Edition by Bryan A. Garner published by West Publishing & Co. and printed in the United States of Americaat page 67*** where Agency is defined as:

> ***"A fiduciary relationship created by express or implied contract or by law in which one party (the Agent) may act on behalf of another party, (the Principal)".***

He also referred to the case of:***OSIGWE VS. PEPLS Mgt. CONSORT. LTD (2009) 16 WRN 1R.7 at page 64***where the Court also referred to ***Black's Law Dictionary, 7th Edition***, which defined an Agent as:

> ***"one who is authorized to act for or in place of another; a Representative. The word "Agent" or 'Agency' it is stated therein denotes one who acts, a doer, etc. that accomplishes a thing or things. The agent normally binds his Principal and certainly not himself by the contract he makes. An Agent in my view means more or less the same thing as a delegate"***.

Again, he referred to the case of:***AWOLANA VS. N.D.I.C. (2008) 16 WRN 158R7 at page 177-178*** where the Appeal Court held that parties under the law of ***estoppel per rem judicatam*** include not only the parties named on the writ but also their privies. He also relied on the case of: ***AYANKOYA VS. OLUKOYA (1996) 35 LRCN 280R7*** where the Supreme Court held *inter alia* thus:

> ***"He who does an act through another is deemed in law to do it himself".***

He therefore urged the Court to hold that the Claimant was the Principal of Mr. Henry Okoh who the Defendant found on the land in dispute, who informed the Defendant that his senior brother sent him to work on the land.

ISSUE 2:

Whether the final judgment in HCU/17/2014 between Pa. Joseph E. Omonua and Mr. Henry Okoh does not constitute a bar or estoppel per rem judicatam to this suit.

Arguing this issue, learned counsel adopted his arguments on Issue 1 and submitted that the final judgment in HCU/17/2014 is a bar or an ***estoppel per rem judicatum*** in this suit.
He referred to the case of: ***AWOLANA VS. N.D.I.C. supra R.4, page 176*** where the Court of Appeal set out what a Defendant must show to invoke the equitable defence of ***estoppel per rem judicatam*** as follows:

i. An earlier decision on the issue
ii. A final Judgment on the merit; and
iii. The involvement of the same parties in privy with the original parties.

He contended that in this case, the Defendant found the agent of the Claimant on his land and on interrogation the agent informed him that he was sent to the land by his senior brother whose name he refused to disclose. He said that the Defendant was disturbed by the trespass on his land and he instructed his Counsel to write letters to the unknown Unogbo man; Mr. Henry Okoh himself; and the Divisional Police Officer. He said that the letters were written and dispatched to them but when the nuisance continued, the Defendant instituted Suit No: HCU/17/2014 for a declaration of title to the land in dispute, damages and injunction against Mr. Henry Okoh and his senior brother.

He said that the defendants in the said suit were duly served and one I.K. Usifoh Esq. entered appearance for them. According to him, the Defendants failed to defend themselves and judgment was delivered against the alleged agent, Henry Okoh, the Defendant having withdrawn against the unknown Unogbo man.

Counsel contended that paragraphs 1 to 16 of the Defendant's counter claim shows that this case had been litigated upon in HCU/17/2014 and paragraphs 17 to 34 shows that the said suit went through the mill of civil procedure culminating in the judgment on the merit which cannot be set aside by the mere wishes of the Claimant. He therefore urged the Court to hold that the Defendant in this case has satisfied the three conditions set out by the Court of Appeal in the ***AWOLANA VS. N.D.I.C's case supra***.

In conclusion, he submitted that the final judgment in Suit No: HCU/17/2014 constitutes a bar or ***estoppel per rem judicatam*** in this suit. He therefore urged the Court to dismiss the suit with substantial costs.

In opposition to the application, with the leave of this Court, the learned counsel for the Claimant/Respondent filed a Counter-Affidavit of four paragraphs and a Written Address of Counsel.

In his Written Address, the learned counsel, Dr. Bola Adekanle formulated two Issues for Determination as follows:

1. ***Whether from the affidavit evidence of the Defendant/Applicant and the counter affidavit of the Claimant/Respondent, it can be said that Henry Okoh is an agent of the Claimant/Respondent in this suit; and***
2. ***Whether the judgment in Suit No: HCU/17/2014 can constitute res judicata to bar subsequent action between the Claimant/Respondent and the Defendant/Applicant herein.***

Thereafter, learned counsel argued the issues *seriatim*.

ISSUE ONE:

Whether from the affidavit evidence of the Defendant/Applicant and the counter affidavit of the Claimant/Respondent, it can be said that Henry Okoh is an agent of the Claimant/Respondent in this suit.

Arguing this issue, learned counsel submitted that there is nothing to show that Henry Okoh is actually the Claimant/Respondent's agent. That no document has been exhibited to connect Henry Okoh with the Claimant/Respondent. He said that the Claimant/Respondent has vehemently denied that Henry

Okoh is his agent in respect of the land. He said that Henry Okoh himself stated that he has no interest whatsoever on this land and denied being an agent of the Claimant/Respondent.

He submitted that it is an elementary principle of law that he who asserts must prove. That mere assertion without more cannot be considered as proof particularly in the face of denial. He cited the case of: ***ORIANZI V. A.G. RIVERS STATE & ORS. 271 L.R.C.N. PG. 150 @ 197PZ RATIO 7.***

He therefore urged the Court to resolve issue one in favour of the Claimant/Respondent.

ISSUE TWO:

Whether the judgment in Suit No: HCU/17/2014 can constitute res judicata to bar subsequent action between the Claimant/Respondent and the Defendant/Applicant herein.

Here, learned counsel submitted that the principle of ***res judicata***, does not apply to this suit. He maintained that although the land in dispute in Suit No: HCU/12/2014 and HCU/37/2018 is one and the same, the parties are not the same.

He submitted that where the parties are not the same, in the previous suit and the present one, the doctrine of ***res judicata*** cannot apply. For this view, he referred the Court to the following decisions on the point: ***MBA V. AGU (1999) 72 L.R.C.N. PG. 3152 @3174AB RATIO 4 and AGWU V. IBENYE (1998) 62 L.R.C.N. PG. 4805 @ 4823CE RATIO 2.***

Finally, he urged the Court to dismiss this application in the interest of justice.

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, to determine the application, I will adopt Issue Two as formulated by the Defendant/Applicant with a slight modification as follows:

> ***Whether the final judgment in Suit No: HCU/17/2014 between Pa. Joseph E. Omonua and Mr. Henry Okoh constitutes estoppel per rem judicatam to the present suit?***

As already adverted to in this ruling, it is the contention of the Defendant/Applicant that, the land in dispute had previously been litigated upon to conclusion between the Claimant's agent and the Defendant in Suit No: HCU/17/2014.That is, before the Claimant filed the present suit over the same property. The Defendant/Applicant is therefore raising as a shield, the plea of ***estoppel per rem judicatam***

However, the Claimant's reaction to this is simply that he was never a party or privy to the previous 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***) and the cases of: ***(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.

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 common ground that the subject-matter of the previous suit is the same in the present suit. Furthermore, 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.

The only bone of contention between the parties is that the Claimant/Respondent is seriously contending that he was never a party to the previous Suit No: HCU/17/2014. He has consistently maintained that Henry Okoh was not his agent in respect of the land. That Henry Okoh himself stated that he has no interest whatsoever on the land and that he denied being his agent.

At this stage, the Claimant has denied any Principal and Agent relationship with Henry Okoh. I have exhaustively searched all the court processes filed by both parties in this application and I cannot find any document to establish the alleged agency**.** We will be stretching the judgment too far to begin to include an unnamed and unknown Principal. Furthermore, there is nothing to show that the Claimant is the unknown Unogbo man that was alleged to be the Principal of Henry Okoh. As can be gleaned from the aforesaid judgment, the said Henry Okoh never testified at that trial to identify himself as the agent of any principal, not even the Claimant.

In view of the uncertainties surrounding the status and the identity of the said Henry Okoh and his alleged principal, it is difficult to hold that the Defendant has 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.***

Consequently, the sole Issue for Determination is answered in the negative. The application is accordingly dismissed with N20, 000.00 (twenty thousand naira) costs in favour of the Claimant/Respondent.

P.A.AKHIHIERO
JUDGE
6/2/19

COUNSEL:
J.I.EREWELE ESQ……..…….……DEFENDANT/APPLICANT

DR.BOLA ADEKANLE…….....……..…….CLAIMANT/RESPONDENT