

ANTHONY DAMISA TIPUT

(for himself and on behalf of Denan Sarkin Bungaha's Family)

V.

1. HALILU ALI DAWAMKAT

(Alias Halilu Yasa Dawamkat)

2. IBRAHIM VERENG TU

(For themselves and on behalf of Dawamkat's Family)

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

SC/593/2019

Uwani Musa Abba Aji

Ibrahim Mohamed Musa Saulawa

Emmanuel Akomaye Agim

Chidiebere Nwaoma Uwa

Obande Festus Ogbuinya

Friday 4th July, 2025.

Action: Res judicata - essential element thereof

Action: Res judicata - objects and purport thereof

Action: Issues in dispute - where an issue has been litigated and decided between parties - whether such an issue cannot be relitigated - the principle in Fedelites Shipping Co. Ltd vs. Export Child (1966)1 QB 630 @640

Action: Plea of res judicata - when successful - relevant considerations

Practice and Procedure: Issue for determination - purpose thereof

Practice and Procedure: Issue for determination - where an issue is subsumed in another issue - whether it will no longer be necessary for the court to make a separate pronouncement on the issue subsumed

Practice and Procedure: Issue for determination - discretion of court thereto - whether court has discretion to subsume one issue in another - the principle in Adebayo vs. AG Ogun State (2008) LPELR -80(SC)

Words and Phrases: Issue - meaning

Words and Phrases: Res judicata- meaning

Issues:

- 1. Whether the Court of Appeal was right when it affirmed the decision of the trial court that suit No. PLD/P.28CV/2013 between the parties herein is caught up by the doctrine of Res-Judicata in view of the decision of the Area Court Mangu in suit No. CV.323/1983 between Mai-Angwa Dawap of Millet and Sarkin Bungha Denan without considering or looking at another decision of the Upper Area Court in suit No. CV/79/1985 between Alhaji Shuaibu and Sarkin Bungha Denan before arriving at its judgment. (Ground 1).**
- 2. Whether the Court of Appeal was right to have affirmed the decision of the trial court that suit No. PLD/28CV/2013 was caught up by res judicata without looking at the pleadings of the parties, and Exhibits G, G1 and G2 attached to the Appellant's counter-affidavit, wherein the Respondents had admitted that the land in dispute in suit No. PLD/P.28CV/2013 is different from the land declared in favour of their father in suit No. CV/323/1983. (Grounds 2 and 3).**
- 3. Whether the learned Justices of the Court of Appeal were right when they failed and neglected to determine issue 2 formulated by the Appellant in his brief to wit.**

Whether the trial Court was right when it upheld the plea of resjudicata in view of the decision of the Area Court in suit No. cv/323/1983 notwithstanding that the upper Area Court in a later suit N. CV/79/1985 between Alhaj Shaibu Babaie Vs. Denan Sarkin Bungha fto which Mai-Anclwa Dat/vap testified in favour of the Alhaji Shaibu Babaje) held that the Denan Sarkin Bungha (the Appellant's progenitor) was the owner of land surrounding the entire Manqu General Hospital, the subject matter in this appeal (Grounds 1 and 2).

and if the answer is in the Affirmative, whether the failure has not occasioned a miscarriage of justices against the Appellant. (Ground 4).

Facts:

The Plaintiff/Appellant sued Defendants/Respondents at the High Court of Plateau State seeking declaratory and injunctive reliefs. The parties exchanged pleadings. The Defendants/Respondents subsequently filed a preliminary objection challenging the competence of the suit on the ground of res judicata. After hearing the application, the trial court dismissed the suit on ground of res judicata.

Dissatisfied with the ruling of the trial court, the Plaintiff /Appellant unsuccessfully appealed to the Court of Appeal, Jos Division, hence this further appeal to the Supreme Court.

Held (unanimously dismissing the appeal)-

1. On meaning of res judicata -

The term **res judicata** simply denotes 'a thing adjudicated'. The full expression of the term (in **Latin**) used to be "**res adjudicata**". The term res judicata is equally defined:

- 1. An issue that has been definitely settled by judicial decision.**
- 2. 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 and that could have been but was not raised in the first suit.**

2. On three essential elements of res judicata -

The three essential elements are:

- (1) *an earlier decision on the issue;*
- (2) *a final judgment on the merits; and*
- (3) *the involvement of the same parties, or parties in **privity with the original parties... Also termed res adjudicata; claim preclusion.***

See **BLACK'S LAW DICTIONARY, 12th Edition, 2022 @ 1085 - 1086,**

3. On object and purpose of doctrine of res judicata -

The fundamental object of the doctrine of res judicata is to put an end to a matter that was previously litigated by the same parties and determined on the merits by a Court of competent jurisdiction. The whole purpose is to avoid duplicity (multiplicity) of litigation, thereby saving so much litigation time and expenses. Thus, the essence of the doctrine of res judicata is that a previous judgment or decision of the Court would constitute a bar to a later *action*. See **ABUBAKAR VS. BEBEJI OIL AND ALLIED PRODUCTS LTD & ORS (2007) 18 NWLR (Pt. 1066) 319; (2007) 2 SC 48; (2007) LPELR – 55 (SC) Pa Niki Tobi, JSC 54-55 paragraphs F-A.**

4. On when an issue has been litigated -

Indeed, it's a well settled doctrine, that once an issue has been raised and specifically adjudicated (decided) between the parties, neither party can be allowed to litigate the case or issue all over again. The rule was aptly stated by Lord Denning, L.J. in **FEDELITES SHIPPING CO. LTD VS. V/D EXPORT CHILD (1966) 1 QB 630 @ 640.**

The rule is that once an issue has been raised and distinctly decided between the parties, then as a general rule neither party can be allowed to fight the issue all over again.

The same issue cannot be raised by either of them in the same or subsequent proceedings.

5. *On conditions for a successful plea of res judicata -*

To sustain a plea of **res judicata**, the party pleading same must satisfy the following conditions:

- (j) *That there was an adjudication of the issues joined by the parties;*
- (ii) *That the parties (or their privies) are the same in the present case as in the previous case;*
- (iii) *That the issue and subject matter are the same in the previous case as in the present case;*
- (iv) *That the previous decision must have finally decided the issues between the parties, that is, the rights of the parties were finally determined.*

See EZEKIEL ADEBAYO VS. ALHAJ1 YAKUBU BABALOLA & ORS (1995) 7 NWLR (Pt. 408) 383; 1995 LPELR – 85 (SC); MICHAEL EZENWA KAREEM (1990) 3 NWLR (Pt. 138) 258 @ 264, 267 & 268; Cardoso vs. Daniel (1986) 2 NWLR (pt. 20) 1; ZUNGWE VS, GBISHE (1985) 2 NWLR (Pt. 8) 528; CHINWENDU VS. MBAMALI (1980) 3-4 (SC) 31; BAMISHEBI VS. FALEYE (1987) 2 NWLR (Pt. 54) © 561.

In the instant case, the fact that the parties (or their privies, the claims or issues in dispute) were the same in the previous case, as well as in the present case, is not in dispute at all. It is also not in dispute, that the Court that gave the previous decision relied upon to sustain the plea of **res judicata**, is a Court of competent jurisdiction.

It is apparent, that the only issue of contention is regarding the condition III – i.e. whether or not the **res** of the subject matter of the litigation in the two cases is the same.

It's trite, that while the Respondent have contended (as found by the two Courts below) that the subject matter in the present suit is one and the same with the subject matter in suit No. **CV:323/ 1983**. The Appellant, on the other hand, vehemently contended that the present suit is not in respect of the subject matter in suit No. **CV/ 79/ 1985**.

6. On the findings of the trial court -

Thus, the fundamental point of the instant case, is whether the trial High Court and the Court of Appeal were wrong in their concurrent findings that the land in dispute in the earlier suit No. **CV/323/ 1983** is one and the same with the land in dispute in the suit leading to present suit, thereby coming to the conclusion that the suit was caught up by the doctrine of ***estoppel per rem judicatam***.

Instructively, the Ruling of the trial High Court, leading to the present appeal, spans a total of 41 pages (pages 522 to 562 of the Record of Appeal). The trial Court, in the course of the said Ruling (at page 543, lines 7 to 18 of the Record) stated :

***From the foregoing submissions/arguments proffered by
the learned Counsel for both the Defendants/ Applicants***

and Plaintiff/Respondent, based on the respective issues for determination formulated each of them therefrom, the affidavits filed, this Court finds it more convenient to deduce a narrow issue and simply formulate the issue for determination in which others will be considered (since this Court is not sitting on appeal) as follows:

Whether this substantive No. PLD/28CV/2013 is caught up by the doctrine of Estoppel Per Res Judicata.

Having accorded an ample regard upon the affidavit, the exhibits attached thereto vis-a-vis the submissions of the learned respective Counsel, the trial Court made some far-reaching findings (at pages 553 to 554 of the Record of Appeal) to the following effect :

From the foregoing affidavit evidences placed before this Court including the Exhibits attached in support of the affidavit in support, further and better affidavit and counter affidavit, it is clear that:

1. The plaintiff in Suit No. PLD/P.28CV/20-13 is a member of the Sarkin Bungha Denan family which also include Sarkin Bungha Denan, the Defendant in Case No: CV/323/1983 and CV/79/1985.

2. The Case No. CV/323/1983 was determined by the Magu Civil Area Court, sitting at Mangu in respect of a claim of declaration of title to land as described in the judgment i.e. Exhibits A and AI as the land "from the South to the North he came and have boundary with the valley of the stream. Then he turned to the east and also turned to the South from stream. Then he turned to the east and also turned to the South from the end of the tarred road, he has boundary with the tarred road which goes to Jos. Then he went to the west and stopped where started. Which is the extent of the land litigated upon and determined in favour of the said Mai-Angwa Dawamkat.

3. The Defendants in Suit No. PLD/P.28CV/2013 are rmembers of the Dawamkats family which also include among others Mai-Angwa Dawap or Dawamkat of Millet, the Plaintiff in Case No. CV/323/ 1983.

4. The subject matter in suit No. PLD/P.28CV/2013 and in Case No. CV/323/1983 in respect of declaration of title to land in Shidyel, but in respect of a piece of land that is been disputed by the parties in this suit to be one and the same.

5. That the Case No. CV/79/1985 between Shaibu Babuje Vs. Denan Sarkin Bungha was determined in favour of Denan Sarkin Bungha when the Court in that case held that i ..."Plaintiff be contented with the farm portion westwards facing towards Low Cost Area starting from those small yemisa trees down to locust beans trees which was formally shown to him exactly by the Defendant which is well known to him while Defendant and his children should retain their family farm which surrounds the whole of Mangu Junior Hospital Area been an inherited farmland." in this case No. CV/79/1985, the said Mai-Angwa Dawamkat testified and gave evidence as PWI, stating that his land shares boundary with the land in dispute in that case (CV/ 79/ 1985).

6. The Exhibits A/AI; B/BI; C; D; 1, 2, 3, and 4 of the affidavit in support and further and better affidavit as well as Exhibits A; B; D; DI; E; and facts all of the counter affidavit relate to the farmland in dispute between the two families which started with Case No. CV/323/1983 and subsequent cases/suits thereafter.

7. On the application of res judicata -

Thus, the trial Court came to the following inevitable far-reaching conclusion (at pages 560 to 561 of the Record of Appeal):

From the affidavit evidence and Exhibits placed before this Court, it is clear that there was an adjudication of issue of declaration of title to land which issue was joined, heard and determined in Case No. cv/323/1983 between Mai-Angwa Daawap Dawamkat and Sarkin Bungha Denan and whose privies are parties in this present suit No. PLD/P.28CV/2013. The subject matter in the Case No. CV/323/1983 is for declaration of title to land and is the same with the subject matter in suit No. PLD/P.28CV/2013 which also seeks for declaration of title to land which is the main relief. The claim of the Plaintiff/Respondent as filed by the Plaintiff in suit

No. PLD/P.28CV/2013 is for himself and on behalf of Denan Sarkin Bungha's family against the Defendants/ Applicants sued for themselves and on behalf of Dawarnkat's family. It is an undisputed fact that the adjudication in Case No. CV/323/1983 was carried out by the Mangu Civil Area Court, Sitting at Mangu which as at that time was and is competent Court, saddled with the responsibility of adjudication and thus a Court of competent jurisdiction over the subject matter before it.

From Exhibits A/A1 AND B/B1 as well as D & D1, it is clear that all the judgment/decisions of the Courts decided the issues and subject brought before it finally thereby determining the rights of the parties before it. The said decision of the Court in Exhibits A/A1 and B/B1 relied upon in support of this application is valid, final and subsisting as against the parties and/or their agents, servants or pri vies .

In the light of this Court's findings in the determination of the singular issue raised/formulated by this Court which is not sitting on Appeal over Cases No. CV/323/2013; CV/402/1983; CV/79/1985 and many other as exhibited and attached to the respective affidavit evidence placed before this Court, it is my believe therefrom that the Defendants/Applicants Notice of preliminary Objection seeking for the dismissal of suit No. PLD.P.28CV/2013 for being caught up by the doctrine of estoppel per res judicata is meritorious and which ought to succeed.

The Court below, after painstakingly reviewing the record of appeal vis-a-vis the findings of the trial Court, held at page 716 of the Record of Appeal :

I agree with the Court below when on page 560 of the record opined as follows:

"From the affidavit evidence and exhibits placed before this Court, it is clear that there was an adjudication of issue if declaration of title to land, which issue was joined, heard and determined in case No. CV/323/1983 between MAI-ANGWAN DAWAP DAWAMKAT AND SARKIN BUNGHA

DENAN" and whose privies are parties in this present Suit No. PLD/P.28CV/2013. The subject matter in the case NO. CV/323/1983 is for declaration of title to land and is the same with the subject matter in Suit No. **PLD/P.28CV/2013**.

In view of the fact that the doctrine of estoppel per rem judicatam is applicable in this case, the conditions for a successful plea having been satisfied, the lower Court was right in upholding the preliminary objection and dismissing the appellant's suit No. PLD/P.28CV/2013.

Issue one I resolved in favour of the Respondents against the Appellants.

8. On meaning of issue-

Invariably, the term issue denotes a point in dispute between two or more parties in a suit. It's a trite fundamental doctrine, that an issue for determination in an appeal must not only arise from, and relate to the grounds of appeal filed, but also ought to be such a proposition of law or fact or both so cogent, weighty and compelling that a decision thereupon in favour of a party to the appeal would entitle him to the judgment of the Court. See **CHIEF ONWUKA KALU VS. CHIEF VICTOR ODILI & ORS (1992) 6 SCNJ 76; (21992) LPELR – 1653 (SC) @ 21 paragraphs DF; UGA VS. OBIEKWE (1989) 1 NWLR (Pt. 99) 566 @ 580; STANDARD CONSOLIDATED DREDGING & CONSTRUCTION CO. VS. KATONCREST NIG. LTD (1986) 5 NWLR (Pt. 44) 791; OKOYE VS. NCF CO. LTD (1991) 6 NWLR (1990) 501.**

9. On purpose of formulating issues -

The fundamental objective of framing issues is simply to lead **to** a more judicious and proper determination of an appeal. That's to say, the primary purpose of formulating issues is to narrow the issues in controversy in the interest of accuracy, clarity and brevity. See **UNITY BANK PLC VS. BOUARY (2008) 2-3 SC (pt. 11); (2008) LPELR – 341 (SC); MUSA SHA (JUR) VS. DA RAPH KWAN (2000) 5 SCNJ 101.**

10. On when an issue is subsumed in another issue-

Indeed, it's trite law, that when a party raises an issue for determination, the Court must unreservedly pronounce on same. However, there is an exception to that general rule. That's where the issue so submitted is subsumed in another issue, it should no longer be necessary *for* the Court to make a separate pronouncement on the issue subsumed. See **SABURI ADEBAYO Vs.. AG OF OGUN STATE (2008) 7 NWLR (Pt. ..); IYAJI VS. EYIGBE (1987) NWLR (Pt. 61) 523; (1987) LPELR 1571 (SC); WESTERN STEEL WORKS VS. IRON & STEEL WORKERS (1987) 1 NWLR (Pt. 49) 284 @ 304; INUA VS. NTAH (1981) All NLR 576; EJEWHOMU VS. EDOK-ETER LTD (1986) 5 NWLR (Pt.39) 1 @ 16; 30 @ 34-35.**

11. On discretion to subsume issue 2 in another issue -

In ADEBAYO VS. AG OGUN STATE (2008) LPELR – 80 (SC), this Court aptly reiterated the trite fundamental doctrine:

It is trite that when a party submits an issue to a Court for determination, that Court must make a pronouncement on the issue except where the issue subsumed in another issue. Where that happens, there shall no longer be the necessity of making a separate pronouncement on the issue subsumed.

Per Muhammad, JSC @ 14 paragraphs E-G.

In the instant case, as copiously alluded to above, the Court below stated at pages 707-708 of the Record of Appeal, that the issues identified by the parties in their respective briefs were similar. The Court, in its wisdom, held that there were only two issues from the four issues formulated by the parties that were relevant to the determination of the appeal before it, i.e. "**issues one and three**". The Court below rightly in my view, proceeded to determine the appeal on the basis of the said issues one and three

Thus, I am unable to appreciate, let alone uphold, the Appellant's preposterous argument that the Court below had failed or neglected to determine the issue 2 formulated by the Appellant in the brief thereof. Undoubtedly, the exercise of the discretion by the Court in subsuming the issue 2 of the Appellant in the issues 1 and 3 has not in any way amounted to a miscarriage of justice.

In the circumstance, the issue 3 ought to be, and same is hereby resolved against the Appellant.

History of the case:

Supreme Court:

Names of Justices who sat on the appeal: Uwani Musa Abba Aji, Ibrahim Mohamed Musa Saulawa, Emmanuel Akomaye Agim, Chidiebere Nwaoma Uwa, Obande Festus Ogbuinya

Appeal No. SC/593/2019

Date of Judgment: Friday, 4th July, 2025

Names of Counsel: Edwin O. Okorom, Esq. for the Appellant. S. D. Samchi, Esq. for the Respondents.

SAULAWA, JSC (Delivering leading judgment): The instant appeal is against the judgment of the Court of Appeal, Jos Judicial Division, delivered on February 1, 2019, in appeal No. **CA/J/43/20 1 7**. By the said judgment, the Court below coram: O. Onyemenam, T. Y. Hassan and M. N. Oniyangi, JJCA, affirmed the Ruling of the trial High Court, delivered on April 28, 2016, thereby striking out the Appellant's suit on the ground that it was caught up by the doctrine of *res judicata*.

BACKGROUND FACTS

The facts and circumstances surrounding the instant case are gleanable from the records of appeal. Regrettably, the case has had a chequered history, dating back to 1983.

Most particularly, the suit No. **PLD/P.28CV/ 2013**, was commenced by the Appellant at the trial High Court in October 2013,

thereby seeking some declaratory and injunctive reliefs against the Respondents herein. Upon receipt of the writ of summons and statement of claim, the Respondents filed a statement of Defence .

On 19/11/2013, the Respondents deemed it expedient to equally file a Preliminary of Objection, thereby challenging the competence of the suit on the ground of ***res judicata***. The Respondents' objection was predicated upon the decision of the Grade I Area Court, Mangu, in suit No. **CV/ 323/ 1983**, between Mai-Angwa Dawap of Millet (alias Dawamkat) and Sarkin Bungha Denan of Bungha – the predecessors of the respective parties.

The trial High Court heard Counsel to the respective parties regarding the Preliminary Objection, delivered its Ruling on 28/4/2016 and accordingly dismissed the suit on the ground of ***res judicata***.

Dissatisfied with the said Ruling of the trial Court, the Appellant appealed to the Court below. in the vexed judgment thereof, the Court below held to the conclusive effect:

It is my view, that the Preliminary Objection sought within the ambit of estoppel per rem judicata is in relation to the substantive case and is not of the same status as normal interlocutory applications which are seen in the usual run of business. The judgment of the lower Court can not be faulted as there is no miscarriage of justice occasioned. There must be an end to litigation.

... The appeal is unmeritorious and it is dismissed.

The Ruling of the trial Court, delivered on the 28th of April, 2016 is affirmed.

Costs of N100,000.00C) for the Respondents against the Appellant.

On April, 28, 2025, when this appeal came up for hearing, the learned Counsel had the opportunity of addressing the Court and adopting their respective briefs of argument, thereby resulting in reserving judgment to today.

The Appellants' brief of argument, settled by Edwin O. Okoro, Esq. on 18/7/2019, spans a total of 29 pages. At pages 2-3 of the brief, three issues have been couched for determination:

1. Whether the Court of was right when it affirmed the decision of the trial court that suit No. PLD/P.28CV/2013 between the parties herein is caught up by the doctrine of Res-Judicata in view of the decision of the Area Court Mangu in suit No. CV.323/1983 between Mai-Angwa Dawap of Millet and Sarkin Bungha Denan without considering or looking at another decision of the Upper Area Court in suit No. CV/79/1985 between Alhaji Shuaibu and Sarkin Bungha Denan before arriving at its judgment. (Ground 1).

2. Whether the Court of Appeal was right to have affirmed the decision of the trial court that suit No. PLD/28CV/2013 was caught up by res judicata without looking at the pleadings of the parties, and Exhibits G, G1 and G2 attached to the Appellant's counter-affidavit, wherein the Respondents had admitted that the land in dispute in suit No. PLD/P.28CV/2013 is different from the land declared in favour of their father in suit No. CV/323/1983. (Grounds 2 and 3).

3. Whether the learned Justices of the Court of Appeal were right when they failed and neglected to determine issue 2 formulated by the Appellant in his brief to wit.

Whether the trial Court was right when it upheld the plea of resjudicata in view of the decision of the Area Court in suit No.cv/323/1983 notwithstanding that the UDDer Area Court in a later suit N. CV/79/1985 between Alhaj Shaibu Babaie Vs. Denan Sarkin Bungha fto which Mai-Anclwa Dat/vap testified in favour of the Alhaji Shaibu Baba je) held that the Denan Sarkin Bungha (the Appellant's progenitor) was the owner of land surrounding the entire Manqu General Hospital, the subject matter in this appeal (Grounds 1 and 2).

and if the answer is in the Affirmative, whether the failure has not occasioned a rniscarriage of justices against the Appellant. (Ground 4).

The three issues have been argued **together** at pages 7-27 of the Appellant's brief.

In the main, it's submitted that the crux of this appeal relates to the findings of both Courts below, that the land in dispute in the present suit No. **PLD/P,28CV/2013**, is the same with the one in dispute in **CV/383/ 1983**. Thus, it was on the basis of the said findings, that the trial Court sustained the Respondents' plea of **Res Judicata** , and the Court of Appeal affirmed same.

However, it's submitted that it is apparent but fundamental the error committed by both Courts is their failure to put: the suits No. **CV/383/ 1983** and **CV/ 79/ 1985** side by side in determining the land in dispute in the present suit.

It is contended that looking at the relevant findings and decision of the Area Court Mangu, in **CV/323/1983**, delivered on 14/07/1983, the judgment delivered in favour of the Mai-Angwa Dawap of Millet (Dawakat) against Sarkin Denan Bungha, has no relationship with the land where Mangu General Hospital was sited, or its surrounding land.

Further contended, that the Respondents' claim of the land surrounding the General Hospital was the one in dispute in suit suit No. **CV/323/ 1983**, can not be correct, going by the decisions in *suits CV/323/1983 and CV/79/1985*.

According to the Appellant, it's the latter suit between **Alhaji Shuaibu Babuje Vs. Sarkin Denan Bungha** that is related to the Gi'heral Hospital. The Appellant equally contends that the trial Court refused to be guided by the facts and Exhibits attached, went on a frolic of its own and embarked on assumption of whether the land the subject matter in **CV/323/ 1983** was at the right or left (side) of Jos- Mangu – Pankshin Road. See page 558 lines 5-10 of the Record .

It's postulated that looking at issues 1 and 3, which the Court below hastily adopted, it's clear that the decision in **CV/ 79/1985** was omitted and not considered at all. That the Court below failed in its judgment to put the two previous decisions side by side to confirm which one relates to the land surrounding Mangu General Hospital .

Conclusively, the Court is urged upon to allow the appeal, set aside the judgment of the Court below and the Ruling of the trial Court, and remit the case to the High Court differently constituted for hearing on the merits.

Contrariwise, the Respondents' brief, settled on 23/9/2019 by SD Sanchi Esq, spans a total of 32 pages. At pages 5-6 of the brief, two issues have been nominated for determination:

*i. Having regards to the proceedings and judgment in the previous suit No. CV/323/1983 and the disputed land as described by the Appellant in his statement of claim, particularly paragraphs 5, 6 and 7 thereof, whether the learned justices of the **lower Court were wrong when they upheld the decision of the trial Court, sustained the preliminary objection and dismissed the Appellant's suit No.***

PLD/P28CV/2013 on the ground that same is caught up by the doctrine of estoppel per rem judicatam. (Grounds 1, 2, and 3).

ii. ***Whether the Learned Justices of the lower Court failed and/or neglected to determine issue 2 formulated by the Appellant in his brief of argument filed before the lower Court and if so, whether the said failure occasioned any miscarriage of justice against the appellant. (Ground 4).***

The issue 1 is extensively canvassed at pages 6-25 of the Respondents' brief. In the main, it's submitted that from the facts pleaded in paragraphs 5, 6 and 7 of the Appellant's statement of claim (in suit No. ***PLD/P.28CV/ 2013***) the Appellant described the land by making references to "***the Jos – Pankshin tarred road***" on the one side, and the "***River/Stream***" on the other side. That those same features were prominently and vividly captured in Dawamkat's description/demonstration of his land in ***CV/ 323/ 1983***. See Exhibit A attached to the Notice of the Preliminary Objection .

Further submitted, that from paragraph 4. 04 of the Appellant's brief, the Appellant demonstrated lack of proper appreciation of the principle laid down in ***MAKUN VS FUT MUNNA (2011) 18 NWLR (pt. 1278) 190 @ 222 paragraphs E-F***.

Referring to page 715 of the Record of Appeal, it's contended that the Court below has abundantly demonstrated its consideration of the previous judgment in case No. ***CV/323/1983***, in its effort to ascertaining the disputed land *therein* . See ***IKPANG VS. ESOHO (1978) 6-7 SC 155 @ 165***.

It's contended, that whenever an objection is raised to the jurisdiction of the Court, as in this case, only the statement of claim *s considered* . See ***TSKJ (NIG) LTD VS. OTOCHEM (NIG) LTD (2018) 11 NWLR (Pt. 1630) 330 @ 541; ESSI VS. MG PORTS PLC (2018) 2 NWLR (Pt. 1604) 361 @ 396, et al.***

In the circumstance, the Court is urged to resolve the issue 1 in favour of the Respondents.

The issue 2 is argued at pages 25-29 of the brief, to the effect that the Appellant was wrong to have argued that the Court below failed to consider the Appellant's issue 2 raised before it. See ***FMH VS. CSA LTD (2009) 9 NWLR (Pt. 1145) 193 @ 222 paragraphs D-E; THE STATE VS. SANI (2018) 9 NWLR (pt. 1624) 278 @ 301-302 paragraphs H-C.***

Further argued, that the Court below rightly felt that resolving the issues 1 and 3 distilled by the Respondents could take care of all the other issues in contention by the parties, including the Appellant's issue 2.

In the circumstance, the Court is urged to resolve the issue 2 in favour of the Respondents.

On the whole, the Court is urge to dismiss the appeal.

I have accorded a critical, albeit dispassionate, consideration upon the nature and circumstances surrounding the appeal, the submissions of the learned Counsel contained in their respective briefs vis-a-vis the record of appeal, as a whole. I am inclined to adopting the Appellant's three issues for determination of the appeal, **anon.**

ISSUE NO. 1

The issue I raises the vexed question of whether the Court below was right, when it affirmed the decision of the trial Court that suit No. **PLD/P.28CV/2013** between the parties therein was caught upon by the doctrine of **Res Judicata**, in view of the decision of the Area Court, Mangu in Suit No. **CV/323/ 1983** between Mai-Angwa Dawap of Millet and Sarkin Bungha Denan, without considering the decision of the Upper Area Court in Suit No. **CV/79/ 1985: Alhaji-ghuaibu and Sarkin Bungha Denan**, before arriving at its judgment. The issue 1 is distilled from Ground 1 of the Notice of Appeal.

ISSUE NO. 2

The issue 2 raises the vexed question of whether the Court below was right to have affirmed the decision of the trial Court that the suit No. **PLD/28CV/ 2013** was caught up by **res judicata** without looking at the pleadings of the parties and Exhibits G, GI, G2 attached to the

Appellant's Counter Affidavit, wherein the Respondents had admitted that the land in dispute in suit No. **PLD/P.28CV/ 2013** is different from the land declared in favour of their father in suit No. **CV/323/ 1983**. The issue 2 is distilled from Grounds 2 and 3 of the Notice of Appeal.

Instructively, the term **res judicata** simply denotes 'a thing adjudicated'. The full expression of the term (in **Latin**) used to be "**res adjudicata**". The term *res judicata* is equally defined:

- 1. An issue that has been definitely settled by judicial decision.*
- 2. 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 and that could have been but was not raised in the first suit. The three essential elements are:*
 - (1) an earlier decision on the issue;*
 - (2) a final judgment on the merits; and*
 - (3) the involvement of the same parties, or parties in privity with the original parties... Also termed res adjudicata; claim preclusion.*

See **BLACK'S LAW DICTIONARY, 12th Edition, 2022 @ 1085 - 1086,**

The fundamental object of the doctrine of *res judicata* is to put an end to a matter that was previously litigated by the same parties and determined on the merits by a Court of competent jurisdiction. The whole purpose is to avoid duplicity (multiplicity) of litigation, thereby saving so much litigation time and expenses. Thus, the essence of the doctrine of

res judicata is that a previous judgment or decision of the Court would constitute a bar to a later *action*. See **ABUBAKAR VS. BEBEJI OIL AND ALLIED PRODUCTS LTD & ORS (2007) 18 NWLR (Pt. 1066) 319; (2007) 2 SC 48; (2007) LPELR – 55 (SC) Pa Niki Tobi, JSC 54-55 paragraphs F-A.**

Indeed, it's a well settled doctrine, that once an issue has been raised and specifically adjudicated (decided) between the parties, neither party can be allowed to litigate the case or issue all over again. The rule was aptly stated by Lord Denning, L.J. in **FEDELITES SHIPPING CO. LTD VS. V/D EXPORT CHILD (1966) 1 QB 630 @ 640.**

The rule is that once an issue has been raised and distinctly decided between the parties, then as a general rule neither party can be allowed to fight the issue all over again.

The same issue cannot be raised by either of them in the same or subsequent proceedings.

To sustain a plea of **res judicata**, the party pleading same must satisfy the following conditions:

- (j) *That there was an adjudication of the issues joined by the parties;*
- (ii) *That the parties (or their privies) are the same in the present case as in the previous case;*
- (iii) *That the issue and subject matter are the same in the previous case as in the present case;*
- (IV) *That the previous decision must have finally decided the issues between the parties, that is, the rights of the parties were finally determined.*

See **EZEKIEL ADEBAYO VS. ALHAJ1 YAKUBU BABALOLA & ORS (1995) 7 NWLR (Pt. 408) 383; 1995 LPELR – 85 (SC); MICHAEL EZENWA KAREEM (1990) 3 NWLR (Pt. 138) 258 @ 264, 267 & 268; Cardoso vs. Daniel (1986) 2 NWLR (pt. 20) 1; ZUNGWE VS, GBISHE (1985) 2 NWLR (Pt. 8) 528; CHINWENDU VS. MBAMALI (1980) 3-4 (SC) 31; BAMISHEBI VS. FALEYE (1987) 2 NWLR (Pt. 54) © 561.**

In the instant case, the fact that the parties (or their privies, the claims or issues in dispute) were the same in the previous case, as well as in the present case, is not in dispute at all. It is also not in dispute, that the Court that gave the previous decision relied upon to sustain the plea of **res judicata**, is a Court of competent jurisdiction.

It is apparent, that the only issue of contention is regarding the condition III – i.e. whether or not the **res** of the subject matter of the litigation in the two cases is the same.

It's trite, that while the Respondent have contended (as found by the two Courts below) that the subject matter in the present suit is one and the same with the subject matter in suit No. **CV:323/ 1983**. The Appellant, on the other hand, vehemently contended that the present suit is not in respect of the subject matter in suit No. **CV/ 79/ 1985**.

First and foremost, the suit No. **PC/P.28CV/2013: ANTHONY DAMISA TIPUT (FOR HIMSELF AND ON BEHALF OF DENAN SARKIN**

BUNGHA'S FAMILY) VS. (1) HALIRU ALI DAWAMKAT (ALIAS HALIRU YASA DAWAMKAT), (2) CAPT. ISA DA'OK, (3) IBRAHIM VEG£NGTU (FOR THEMSELVES

AND ON BELAHP OF DAWAMKAT'S FAMILY).

The specific features of this suit have been pleaded and described in paragraphs 5, 6 and 7 of the Statement of Claim of the plaintiff (page 6 of the Record of Appeal) :

5. ***Sarkin Bungha's family land is all that piece of land lying and or situate along the Jos-Pankshin tarred Road and it is to the right, of the said Jos-Pankshin tarred Road, on which there is quiet a number of developrnents.***
6. ***The Sarkin Bungha's family land in dispute, is bounded by the farnlands of the following people: -***
 - (i) ***Mai-Angwa Shaibu Dauda***
 - (ii) ***Ibrahim Gwash***
 - (iii) ***Auta Washak***
 - (iv) ***Madaki Garba Ser***
 - (V) ***Rev. Bulus Davwarn and***
 - (VI). ***Friday Myal***
 - (VII). ***That piece of land which the Mangu General Hospital is built or cited, which piece of land used to be part of the Sarkin Bungha's family land, before the Government of Plateau acquired same from the Sarkin Bungha's family and built the said Hospital, thereon.***
7. ***The Sarkin Bungha's family land is bounded by the Dang Bungha River/Stream to the East and across the river, is the farmland of Shehu Myal.***

On the part thereof, the Appellant vehemently contends that

the present suit is not in respect of the subject matter in suit No.

CV/323/1983, but rather related to the subject matter in suit No. **CV/79/1985**. Thus, the fundamental point of the instant case, is whether the trial High Court and the Court of Appeal were wrong in their concurrent findings that the land in dispute in the earlier suit No.

CV/323/ 1983 is one and the same with the land in dispute in the suit leading to present suit, thereby coming to the conclusion that the suit was caught up by the doctrine of ***estoppel per rem judicatam***.

Instructively, the Ruling of the trial High Court, leading to the present appeal, spans a total of 41 pages (pages 522 to 562 of the Record of Appeal). The trial Court, in the course of the said Ruling (at page 543, lines 7 to 18 of the Record) stated :

From the foregoing submissions/arguments proffered by the learned Counsel for both the Defendants/ Applicants and Plaintiff/Respondent, based on the respective issues for determination formulated each of them therefrom, the affidavits filed, this Court finds it more convenient to deduce a narrow issue and simply formulate the issue for determination in which others will be considered (since this Court is not sitting on appeal) as follows:

Whether this substantive No. PLD/28CV/2013 is caught up by the doctrine of Estoppel Per Res Judicata.

Having accorded an ample regard upon the affidavit, the exhibits attached thereto vis-a-vis the submissions of the learned respective Counsel, the trial Court made some far-reaching findings (at pages 553 to 554 of the Record of Appeal) to the following effect :

From the foregoing affidavit evidences placed before this Court including the Exhibits attached in support of the affidavit in support, further and better affidavit and counter affidavit, it is clear that:

1. The plaintiff in Suit No. PLD/P.28CV/20-13 is a member of the Sarkin Bungha Denan family which also include

Sarkin Bungba Denan, the Defendant in Case No: CV/323/1983 and CV/79/1985.

2. The Case No. CV/323/1983 was determined by the Magu Civil Area Court, sitting at Mangu in respect of a claim of declaration of title to land as described in the judgment i.e. Exhibits A and AI as the land "from the South to the North he came and have boundary with the valley of the stream. Then he turned to the east and also turned to the South from stream. Then he turned to the east and also turned to the South from the end of the tarred road, he has boundary with the tarred road which goes to Jos. Then he went to the west and stopped where started. Which is the extent of the land litigated upon and determined in favour of the said Mai-Angwa Dawamkat.

3. The Defendants in Suit No. PLD/P.28CV/2013 are members of the Dawamkats family which also include among others Mai-Angwa Dawap or Dawamkat of Millet, the Plaintiff in Case No. CV/323/ 1983.

4. The subject matter in suit No. PLD/P.28CV/2013 and in Case No. CV/323/1983 in respect of declaration of title to land in Shidyel, but in respect of a piece of land that is been disputed by the parties in this suit to be one and the same.

5. That the Case No. CV/79/1985 between Shaibu Babuje Vs. Denan Sarkin Bungba was determined in favour of Denan Sarkin Bungba when the Court in that case held that i ..."Plaintiff be contented with the farm portion westwards facing towards Low Cost Area starting from those small yemisa trees down to locust beans trees which was formally shown to him exactly by the Defendant which is well known to him while Defendant and his children should retain their family farm which surrounds the whole of Mangu Junior Hospital Area been an inherited farmland." in this case No. CV/79/1985, the said Mai-Angwa Dawamkat testified and gave evidence as PWI, stating that his land shares boundary with the land in dispute in that case (CV/ 79/ 1985).

6. The Exhibits A/ AI; B/BI; C; D; 1, 2, 3, and 4 of the affidavit in support and further and better affidavit as well as Exhibits A; B; D; DI; E; and facts all of the counter affidavit relate to the farmland in dispute between the two families which started with Case No. CV/323/1983 and subsequent cases/suits thereafter.

Thus, the trial Court came to the following inevitable far-

reaching conclusion (at pages 560 to 561 of the Record of Appeal):

From the affidavit evidence and Exhibits placed before this Court, it is clear that there was an adjudication of issue of declaration of title to land which issue was joined, heard and determined in Case No. CV/323/1983 between Mai-Angwa Daawap Dawamkat and Sarkin Bung tla Denan and whose privies are parties in this present suit No. PLD/P.28CV/2013. The subject matter in the Case No. CV/323/1983 is for declaration of title to land and is the same with the subject matter in suit No. PLD/P.28CV/2013 which also seeks for declaration of title to land which is the main relief. The claim of the Plaintiff/Respondent as filed by the Plaintiff in suit No. PLD/P.28CV/2013 is for himself and on behalf of Denan Sarkin Bungha's family against the Defendants/ Applicants sued for themselves and on behalf of Dawarnkat's family. It is an undisputed fact that the adjudication in Case No. CV/323/1983 was carried out by the Mangu Civil Area Court, Sitting at Mangu which as at that time was and is competent Court, saddled with the responsibility of adjudication and thus a Court of competent jurisdiction over the subject matter before it.

From Exhibits A/A1 AND B/B1 as well as D & D1, it is clear that all the judgment/decisions of the Courts decided the issues and subject brought before it finally thereby determining the rights of the parties before it. The said decision of the Court in Exhibits A/A1 and B/B1 relied upon in support of this application is valid, final and subsisting as against the parties and/or their agents, servants or privies .

In the light of this Court's findings in the determination of the singular issue raised/formulated by this Court which is not sitting on Appeal over Cases No. CV/323/2013; CV/402/1983; CV/79/1985 and many other as exhibited and attached to the respective affidavit evidence placed before this Court, it is my believe therefrom that the Defendants/Applicants Notice of preliminary Objection seeking for the dismissal of suit No. PLD.P.28CV/2013 for being caught up by the doctrine of estoppel per res judicata is meritorious and which ought to succeed.

The Court below, after painstakingly reviewing the record of

appeal vis-a-vis the findings of the trial Court, held at page 716 of the Record of Appeal :

I agree with the Court below when on page 560 of the record opined as follows:

"From the affidavit evidence and exhibits placed before this Court, it is clear that there was an adjudication of issue if declaration of title to land, which issue was joined, heard and determined in case No. CV/323/1983 between MAI-ANGWAN DAWAP DAWAMKAT AND SARKIN BUNGHA DENAN" and whose privies are parties in this present Suit No. PLD/P.28CV/2013. The subject matter in the case NO. CV/323/1983 is for declaration of title to land and is the same with the subject matter in Suit No. PLD/P.28CV/2013.

In view of the fact that the doctrine of estoppel per rem judicatam is applicable in this case, the conditions for a successful plea having been satisfied, the lower Court was right in upholding the preliminary objection and dismissing the appellant's suit No. PLD/P.28CV/2013.

Issue one I resolved in favour of the Respondents against the Appellants.

I am of the considered view, that the foregoing finding of the Court below is cogent, unassailable, and same is supported by the pleadings and evidence on record.

In the circumstance, the issues 1 and 2 ought to be, and same are both hereby resolved against the Appellant.

ISSUE NO. 3

The issue 3 raises the question of whether the Court below was right when it failed to and neglected to determine issue 2 formulated by

the Appellant in the brief thereof, thereby occasioning miscarriage of justice against the Appellant. The issue 3 is distilled from Ground 4 of the Notice of Appeal.

As alluded to above, the judgment of the Court below is contained at pages 701-722 of the Record of Appeal. At pages 704-705 of the Record, the Court has copiously alluded to the three issues raised in the Appellant's brief filed on 23/6/2017

especially, at pages 609-610 of the said Record, the Appella nominated four issues for determination:

- 1. *Whether the trial Court was right when it found that the present suit No. PLD/P.28CV/2013 between the parties herein is caught up by the doctrine of Res-Judicata in view of the of the decision of the Area Court Mangu in suit No. CV.323/1983 between Mai-Angwa Dawap of Millet and Sarkin Bungha Denan notwithstanding that the land which was the subject matter in suit No. CV. 323/ 1983 is different from the PLD/P.28CV/2013 which pieces of land are separated by the Jos-Pankshin tarred road. (Ground 5).***
- 2. *Whether the trial Court was right when it upheld the plea of res-judicata in view of the decision of the Area Court in suit No. CV.323/1983 notwithstanding that the Upper Area Court in a later Suit No. CV/79/1985 Between Alhaji Shaibu Babaje Vs. Denan Sarkin Bungha (to which Mai-Angwa Dewap testified in favour of Alhaji Shaibu Babaje) held that the Denan Sarkin Bungha (the Appellant's progenitor) was the owner of land surrounding the entire Mangu General Hospital, the subject matter in this appeal. (Ground 1 and 2).***
- 3. *Whether the trial Court was right to have delved into at***

interlocutory stage crucial issue of the identity of the land, the subject matter in suit CV/323/1983 and that in Suit No. CV/79/1985 when the said issue is the main issue for determination in the substantive suit. (Ground 3).

4. ***Whether the trial judge was not in grave error when it interpreted the judgment in CV.323/1983 beyond its scope by holding that the land in question is by the left hand side of the road that goes to Jos and by the General Hospital Mangu contrary to the judgment itself and notwithstanding that it is the judgment in CV.79/1985 that specifically mentioned that the Appellant's great grandfather is the title hold of the land by the General Hospital Mangu. (Ground 4).***

Contrariwise, the Respondents deemed it expedient to equally formulate four issues for determination (at page 650 of the Record of Appeal) :

- i, Whether the learned trial judge was wrong in his finding that the subject matter 1 this suit No. PLD/28CV/2013 was one and the same with the subject matter in the earlier and subsisting judgment in suit No. CV/323/1983. (Ground 5).***
- ii. Having regard to the proceedings and judgment in suit No. CV/323/1983, the Affidavit evidence and exhibits filed in support of and in apposition to the Preliminary Objection, and the description of the disputed land herein in the Appellant's Statement of Claim, whether the lower Court was wrong in its finding that the disputed land herein is one and the same with that in suit No. CV/323/1983, thereby holding that same is caught up by the doctrine of estoppel per rem judicatam. (Grounds 1 and 2).***
- iii. Whether the lower Court was wrong for enquiring into the identity of the subject matters in suits No. CV/323/1983 and CV/79/1985 in the course of its judicial determination of the ground of estoppel per -rem judicatam raised in the Preliminary-Objection against the appellant's suit. (Ground 3).***

Whether the lower Court was wrong in its finding that the disputed land in suit No. CV/323/1983 is located in Mangu, on the left hand side of the road that goes to Jos from Pankshin and right hand side of the road coming from Jos to Pant<shin. (Ground 4).

The Court below, at pages 707-708 of the Record, having amply contrasted the four issues raised in the respective briefs the Appellant and the Respondents, stated at page 707 of the Record :

The issues identified by the parties are similar. There are only two issues from the four issues distilled by the parties that are relevant to the determination of this appeal, which are issues one and three.

I shall be guided by the issues identified by the Respondents.

Invariably, the term issue denotes a point in dispute between two or more parties in a suit. It's a trite fundamental doctrine, that an issue for determination in an appeal must not only arise from, and relate to the grounds of appeal filed, but also ought to be such a proposition of law or fact or both so cogent, weighty and compelling that a decision thereupon in favour of a party to the appeal would entitle him to the judgment of the Court. See **CHIEF ONWUKA KALU VS. CHIEF VICTOR ODILI & ORS (1992) 6 SCNJ 76; (21992) LPELR – 1653 (SC) @ 21 paragraphs DF; UGA VS. OBIEKWE (1989) 1 NWLR (Pt. 99) 566 @ 580; STANDARD CONSOLIDATED DREDGING & CONSTRUCTION CO. VS. KATONCREST NIG. LTD (1986) 5 NWLR (Pt. 44) 791; OKOYE VS. NCF CO. LTD (1991) 6 NWLR (1990) 501.**

The fundamental objective of framing issues is simply to lead to a more judicious and proper determination of an appeal. That's to say, the primary purpose of formulating issues is to narrow the issues in controversy in the interest of accuracy, clarity and brevity. See **UNITY BANK PLC VS. BOUARY (2008) 2-3 SC (pt. 11); (2008) LPELR – 341 (SC); MUSA SHA (JUR) VS. DA RAPH KWAN (2000) 5 SCNJ 101.**

Indeed, it's trite law, that when a party raises an issue for determination, the Court must unreservedly pronounce on same. However, there is an exception to that general rule. That's where the issue so submitted is subsumed in another issue, it should no longer be

necessary for the Court to make a separate pronouncement on the issue subsumed. See **SABURI ADEBAYO Vs.. AG OF OGUN STATE (2008) 7 NWLR (Pt. ..); IYAJI VS. EYIGBE (1987) NWLR (Pt. 61) 523; (1987) LPELR 1571 (SC); WESTERN STEEL WORKS VS. IRON & STEEL WORKERS (1987) 1 NWLR (Pt. 49) 284 @ 304; INUA VS. NTAH (1981) All NLR 576; EJEWHOMU VS. EDOK-ETER LTD (1986) 5 NWLR (Pt.39) 1 @ 16; 30 @ 34-35.**

In ADEBAYO VS. AG OGUN STATE (2008) LPELR – 80 (SC),
this Court aptly reiterated the trite fundamental doctrine:

It is trite that when a party submits an issue to a Court for determination, that Court must make a pronouncement on the issue except where the issue subsumed in another issue. Where that happens, there shall no longer be the necessity of making a separate pronouncement on the issue subsumed.

Per Muhammad, iSC @ 14 paragraphs E-G.

In the instant case, as copiously alluded to above, the Court below stated at pages 707-708 of the Record of Appeal, that the issues identified by the parties in their respective briefs were similar. The Court, in its wisdom, held that there were only two issues from the four issues formulated by the parties that were relevant to the determination of the appeal before it, i.e. "**issues one and three**". The Court below rightly in my view, proceeded to determine the appeal on the basis of the said issues one and three

Thus, I am unable to appreciate, let alone uphold, the Appellant's preposterous argument that the Court below had failed or neglected to determine the issue 2 formulated by the Appellant in the brief thereof. Undoubtedly, the exercise of the discretion by the Court in subsuming the issue 2 of the Appellant in the issues 1 and 3 has not in any way amounted to a miscarriage of justice.

In the circumstance, the issue 3 ought to be, and same is hereby resolved against the Appellant.

Hence, against the backdrop of the resolution of the three issues raised by the Appellant, the appeal resultantly is adjudged to be grossly devoid of merits,

Accordingly, the appeal ought to be, and same is hereby dismissed for lacking in merits. The judgment of the Court of Appeal, Jos

Judicial Division, delivered on February 1, 2019, in Appeal Noz **CA/J/43/2017**, is hereby affirmed.

Appeal Dismissed.

OBANDE, JSC: I had, in advance, a thorough preview of the leading judgment delivered by my learned brother: **Ibrahim Mohammed Musa Saulawa, JSC.** I concur fully with the judicial reasoning and conclusion therein.

It is gleanable from the record, the touchstone of the appeal, that the *casus belli inter pa lles* orbits around the sameness *vel non* of the subject matter in Suit No. CV/323/1983 and Suit No. PLD/P28CV/2013 which parented the appeal that midwifed this appeal. A clinical audit of the critical averments in paragraphs 5, 6 and 7 of the appellant's pleading, which were concretised by evidence, the *res* under disputation in the two suits aforementioned is one and same. In view of the oneness of the subject matter in the two actions, with the existence of the other conditions acceptable to the feuding parties, the appellant's latter action, Suit No. PLD/P28CV/2013, was mired in the quicksand of *res judicata* which is erected on the maxim: *Interest rei publicae ut sit ifinis litium*— it is in the public interest that there should be an end to litigation, see **Asaboro v. Pan Ocean Oil Corp. (Nig.) Ltd.** (2017) 7 NWLR (Pt. 1563) 42. The lower court acted *ex debito justitiae* in its confirmatory decision. In effect, it was

not offensive to the letters and spirit of land law as to fetch any atom of intervention from this court

It is *for* this lean reason, added to the legal expositions assembled in the leading judgment, that I, too, visit a deserved order of dismissal on the appeal.
Appeal dismissed.

UWA, JSC: I had the privilege of reading in advance the draft of the leading judgment just delivered by my learned brother, **Ibrahim**

Mohammed Musa Saulawa, JSC, and I agree that the appeal

lacks merit and ought to be dismissed for the reasons advanced therein.

The crux of the appeal is whether the lower courts were correct in finding that Suit No PLD/P28CV/2013 which gave rise to this appeal is one caught by the doctrine of *res judicata* in the light of the decision in Suit No. CV/323/1983? it is trite that the principle of *res judicata* seeks to forestall a court from entertaining the same cause of action on the same issues previously determined by a competent court. Section 173 of the Evidence Act, 2011 which gives statutory foundation to the plea of estoppel per *rem judicata* provides thus:

Section 173:

“Every Judgment is conclusive proof, as against parties and privies, of facts directly in issue in the case, actually decided by the court, and appearing flour the judgment itself to be the ground on which it was based; unless evidence was admitted in the action in which the judgment was delivered whIch is excluded in the action in which that judgment is intended to be proved.”

The plea of *res judicata* is a rule of evidence whereby a party (or his privy) is precluded from disputing in any subsequent proceedings matters which had been adjudicated upon previously by a competent court between him and his opponent. For a plea of estoppel to succeed, a party relying on it must establish the following, namely:

- i. That the parties or their privies involved in both the previous and the proceedings in which the plea is raised are the same;

- ii. The claim or issue in dispute in both proceedings are the same;
- iii. That the res or the subject matter of the litigation in the two cases is the same;
- iv. That the decision relied upon to support the plea is valid, subsisting and final; and
- v. That the court that gave the previous decision relied upon to sustain the plea was a court of competent jurisdiction.

See **OGBOLOSINGA V. B.S.1.E.C (2015) 6 NWLR (Pt. 1455) 311, ODUKA & ORS V. A. KASUMU & ANOR (1967) LPELR-25504(SC) (PP. 15 PARAS. A), BALOGUN V. ODE (2007) 4 NWLR (PT. IC)23) PAGES 20-21 PARAS F-D and NIC & ANOR V. FIRST CONTINENTAL INSURANCE CO. LTD (2006) LPELR-5935.** It is trite that unless all of the above pre-conditions are established the plea of estoppel per rem *judicatam* cannot be sustained. The burden is on the party who sets up the defence of estoppel per rem *judicatam* to establish the above pre-conditions conclusively.

In the instant appeal, parties are at one that some of the pre-conditions are present. The point of divergent is that while the Appellant contended that all of the pre-conditions for the application of the plea of estoppel per rem *judicatam* are present except that the *res* or the subject matter of the litigation in the two cases are different, the Respondents was of the view that all the preconditions for the application of the plea were present. The Respondents relied on paragraphs 5 and 7 of the Statement of Claim of the Appellant as “Plaintiff” in support of their position. The said paragraphs 5 and 7 of the Statement of Claim of the Appellant contained at page 6 of the printed records of appeal are reproduced hereunder:

- 5. “Sarkin Bungha’s family land is all that piece of land lying and or situate along the Jos-Pankshin tarred Road and it is to the right, of the said Jos-Pankshin tarred Road, on which there is quite a number of developments .**

7. The Sarkin Bungha’s family land is bounded by the Dang Bungha River/Stream to the East and across the river, is the farmland of Shelly Myal. ”

From the printed records of appeal before this court *vis a-vis* the reproduced paragraphs above, it is apparent that the description of the land in suit no. PLD/P28CV/2013 as “the jos-mangu Pankshin tarred road” on one side and “River stream” on the other, are the same features prominent and vividly captured in Suit No. CV/323/ 1983. Hence, the pre-condition that the *res* or the subject matter of the litigation in the two cases is the same, was present in this case. It therefore follows that all the pre-conditions for the successful plea of estoppel per *rem judicatam* are present in the case and was successfully raised in this case. The Court below was therefore right in affirming the ruling of the trial court dismissing the Appellant’s suit no. PLD/P28CV/20 13 for being caught up by the doctrine of *res judicata*.

It is for the reasons advanced above and the fuller reasoning in the lead judgment, I also find that the appeal lacks merit, it is hereby

dismissed. The judgment of the court below affirming the ruling of the trial court is here by affirmed.

AGIM, JSC: I had a preview of the Judgment delivered by my learned brother, Lord Justice, **IBRAHIM MOHAMMED MUSA SAULAWA** JSC. I completely agree with the reasoning, conclusions and decisions therein.

ABBA AJI, JSC: I have had the advantage to read beforehand the lead judgment delivered by my learned brother, **Ibrahim Mohammed Musa Saulawa, JSC**, and I am in unreserved concurrence with his reasoning and conclusion that the Appellant's appeal is not fit to be allowed.

The appeal, a product of the ruling of the trial court, predicated upon a preliminary objection, was dismissed on the ground of res judicata, and same affirmed by the lower court. Same hammer of dismissal has now hit the appeal in the lead judgment delivered by my learned brother.

As it pertains to the concurrent findings of two lower Courts, an appellate Court will not interfere unless there be exceptional circumstances to justify such interference. *For* would there be interference with the Judgment of two lower Courts unless there are substantial errors in law or procedure leading to miscarriage of justice. See Per GALADIMA, JSC, in **OGUANUHU & ORS V. CHIEGBOKA (2013) LPELR-19980(SC) (PP. 23 PARAS. A).**

Appeal dismissed.