IN THE SUPREME COURT OF NIGERIA

Suit No: SC110/2001

Petitioner: Alhaji Mohammed Mahdi Abubakar
And
Respondent: Bebeji Oil and Allied Products Ltd Attorney General of Kano State The Governor of Kano State

Date Delivered: 2007-02-16

Judge(s): Idris Legbo Kutigi, Umaru Atu Kalgo, Niki Tobi, Aloma Mariam Mukhtar, Ikechi Francis Ogbuagu

Judgment Delivered

The appellant instituted an action in the High Court of Kano State against the respondents in this appeal, over the ownership of a building at particularly described in the recertified certificate of occupancy No. LKN/RES/RC/82/1622. The property was built in 1972 by Arewa Construction Limited for the plaintiff and he enjoyed peaceful possession of the building until 1977 when it was mistakenly forfeited to the Kano State Oil and Allied Products Ltd., under The Public Officers and other Persons (Forfeiture of Assets) Order 1977. The plaintiff petitioned both the Federal and Kano State Governments, and a Federal Investigation panel was set up. The investigation panel found that the property was wrongfully forfeited, and directed the State Government to reconsider the matter in order to redress the injustice done to the plaintiff. The Kano State Government after. a further investigation found that the property was wrongfully confiscated, and the Military Governor of the State wrote to the plaintiff returning the said property. Series of letters were written to the relevant agents of the Government of Kano State to confirm the return of the property to the plaintiff. In spite of the letters the 3rd defendant (a successor in interest to Kano State Oil Mills) has continued to trespass on the property, thereby preventing the plaintiff from enjoying same. The plaintiff sent series of petitions in respect of this situation, but the 3rd defendant continued in the trespass. Consequently the plaintiff went to court seeking the following reliefs:-

\"17(a) A declaration that the plaintiff is the owner and the holder of a statutory right of occupancy over the land buildings and appurtenances situate at No. 59B Lamido Crescent now 15 Lamido Road Nassarawa Kano covered by certificate of Occupancy No.LKN/RES/82/1622 and is entitled to the full ownership rights over same free from trespass from the Defendants and their agents.

17(b) A declaration that the 3rd Defendant continued entry and occupation of plaintiff's property since October, 1979 is unlawful, illegal and trespass.

17(c) N20 million aggravated damages for trespass against the 3rd Defendant.

17(d) N5 million damages jointly and severally against the Defendants wrongful deprivation of the rent the plaintiff would have earned on the property from 1979 - date.

17(e) An order directing the Defendants whether by themselves, servants, their tenants, agents, privies or whosoever may be in the premises without the consent nor authority of the plaintiff to vacate immediately and give possession of the whole property at 15 Lamido Road Nassarawa Kano together with the appurtenances free from waste, destruction to the plaintiff.

17(f) A perpetual injunction restraining the Defendants whether by themselves, servants, agents, and privies from trespassing, the plaintiffs property at 59B Lamido Crescent now 15B Lamido Road Kano or interfering in any manner with the plaintiff peaceful and quiet enjoyment of the same property.'

The 3rd Defendant denied most of the plaintiff's allegations, alleging that the certificate of occupancy above was obtained by fraud by the plaintiff as a result of destruction of the original records in respect of the premises after the out break of fire at the Ministry of Land and Survey, Kano. According to it the original certificate in respect of the property in controversy was cancelled by the Kano State legal Notice No. 7 No. 1977. The 3rd defendant denied that it trespassed on the property as it has legal and equitable rights to the property, and also canvassed that an act done legislatively cannot be done administratively. A defence of res judicata was raised in the 3rd defendant\'s statement of defence thus: -

'16. The 3rd Defendant will also contend at the trial of this action that the so called letter of Group Captain Ishaya Shekari dated 25th September, 1979 has been invalidated by this court as per the ruling of this court in suit No.

K/378/82 dated 18th day of August 1983. Both the ruling of the court and the certificate of judgment issued thereon are hereby pleaded, and will be relied upon at the trial of this action.

17. The 3 Defendant will also on the defence of res judicata on the issue of declaration of ownership in respect of the premises in question and that defence is hereby specifically pleaded. In addition, the 3rd Defendant will also rely on the decision of Justice R. O. Rowland (as he then was) in suit No.K/378/82 on this matter, in respect of which no appeal had been lodged to date.\"

The learned trial judge considered the above defence and learned counsel\'s addresses, and ruled that his court had jurisdiction to try the case before him.

After the exchange of pleadings parties adduced evidence, which were evaluated by the learned trial judge, who at the end of the day gave judgment in favour of the plaintiff declaring him the owner of the property in dispute. The 3rd defendant was dissatisfied with the decision, and so appealed to the Court of Appeal, and the plaintiff also cross-appealed. The Kaduna division of the Court of Appeal found the appeal meritorious and concluding thus in the judgment: -

\"I therefore declare the judgment of the trial court in suit No. K/291/94 delivered on the 28th March 1996 and all the proceedings relating to the said suit including the order as to costs a nullity and is hereby set aside. I strike out the claims of the 1st respondent before the Kano State High Court.\"

Aggrieved by the above decision, the plaintiff appealed to this court on nine grounds of appeal, from which the appellant distilled six issues for determination in his brief of argument. As is the practice in this court learned counsel for the appellant and 1st respondent exchanged briefs of argument, which were adopted at the hearing of the appeal. Four issues for determination were formulated in the 1st respondent\'s brief of argument. The 2nd and 3rd respondents did not file a brief of argument. The issues in the appellant\'s brief of argument are as follows: -

'(1) Whether or not the decision of Kano High Court dated 22nd September, 1994 not appealed against by the 1st Respondent to the lower court was not conclusive of the issues raised and determined therein for which the lower court lacks jurisdiction to question its correctness.

(2) Whether or not the lower court had jurisdiction to question, challenge, or inquire into the validity of the act of the Military Governor of Kano State as the Appropriate Authority under Decree No. 37 of 1968 in returning Appellant\'s property to him through Exhibit D and instrument dated 25th September, 1979 before the coming into effect of the 1979 Constitution of Nigeria as Amended moreso when none of the Respondents challenged or claimed in court the validity of the instruments returning the said property.

(3) Whether or not the lower court was right in erroneously holding that the Appellant\'s cause of action as disclosed in his Amended Statement of Claim arose on 3rd June 1977 and was a claim challenging forfeiture of his property done in 1977 for which the High Court Kano lacked jurisdiction.

(4) Whether or not in view of the specific findings of the High Court Kano on Exhibit X series tendered by the 1st Respondent, Exhibit D the instrument returning Appellant\'s property and Exhibit A, the new Certificate of Occupancy issued to Appellant not appealed against by the 1st Respondent the lower court was right in embarking on a review of the decision and setting aside same and making a new finding that the property in dispute has not been returned to the Appellant.

(5) Whether or nor the lower court was right in holding that the appellant's claim is an abuse of the process of court

(6) Whether or not the lower court was right in holding that the Appellant\'s claim is an abuse of the process of court. Whether or not the lower court was right in striking out that part of the Appellant\'s Brief relating to his Cross Appeal and in failing to allow the Cross Appeal on the interpretation of Order 6 Rule 7 of the Court of Appeal Rules 1981 as amended.\"

The four issues raised for determination in the 1st respondent\'s brief, of argument are: -

'(1) Whether in the circumstances of this case particularly having regard to the final judgment of the trial High Court, the learned justices of the lower court were not justified in allowing the Respondent\'s grounds of appeal numbers 2, 4, 5, 6, 7, 8, 9, 11 and 12 contained in the Respondent\'s notice of appeal dated the 28th day of March, 1996 filed at the lower court.

(2) Whether the lower court was not justified in holding that the trial High Court lacked jurisdiction to entertain suit No. K/291/94 having regard to: -

a. The provision of Decree No. 37 of 1968 ousting the jurisdiction of the court to entertain matters relating to title and forfeiture of Assets Order 1977.

b. The operation of the doctrine of res judicata and;

c. The principle of abuse of court process regard being had to the existence of suit No. K378/82, filing of suit No.

K7291/94 while suit No. K/M/63/94 on the same property between-the same parties was pending before the same court.

(3) Whether having regard to the public officers and other persons (forfeiture of Assets) Order 1977, otherwise known as Kano State Legal Notice No. 7 of 1977, the learned justices of the lower court were not right in holding that the letter dated 25th day of September, 1979 purportedly returning property situate at No. 59B Lamido Crescent covered by certificate of occupancy No LKN/RES/82/1622 to the Appellant without more, cannot amount to a return of the property when a sober consideration of Exhibits D and XII together clearly shows that the Government of Kano State has not returned the appellant the property in dispute.

(4) Whether any breach of fair hearing principles was occasioned by the learned justices of the Court of Appeal in striking out the present appellant\'s cross appellant\'s brief as it relates to the cross appeal filed at the lower court.

These later issues are in pari materia with the former issues. I will however adopt the appellant\'s issues for determination starting with issue (1) for the treatment of this appeal. Learned counsel for the appellant has submitted that the lower court was wrong in refusing to allow and sustain the appellant\'s notice of preliminary objection which, challenged the 1st respondent\'s grounds of appeal Nos. 2, 4, 5, 6; 7, 8, 9, 11 and 12, and issues Nos. 1, 2, 3, 5 and 6 formulated thereto being grounds of Appeal against the previous interlocutory ruling of High Court Kano delivered on 22/9/94 upon 1st respondent's Motion which challenged the jurisdiction of the trial court to entertain the suit and also challenged the appellant\'s suit as an abuse of the process of court.

The appellant in the lower court raised a notice of preliminary objection on the 1st respondent\'s grounds of appeal Nos. (2), (9), (11) and (12) and the issues formulated to cover the said grounds of appeal. These grounds of appeal according to learned counsel were against the previous interlocutory ruling of the High Court Kano delivered on 22/9/94 upon 1st respondent\'s motion which challenged the jurisdiction of the trial court to entertain the suit and also challenged the appellant\'s suit as an abuse of the process of court. The ruling on that preliminary objection was an interlocutory decision, which required leave of court, to appeal but which leave was not obtained. Then according to learned counsel for the appellant, the lower court erroneously held that since there was no appeal against the interlocutory ruling dated 22/9/94 before the lower court the objection to the competence of these grounds now included in the Notice of Appeal against the final judgment was not in order, as the 1st respondent had the option of ^whether to appeal against the ruling or against the final judgment.

It is a fact that in the lower court where the 1st respondent appealed against the judgment of the trial court, the appellant who was then the 1st respondent raised a notice of preliminary objection as follows: -

'That the grounds Nos 2, 4, 5, 6, 7, 8, 9, 11 and 12 at pages 112-118 of the Record are incompetent and should be struck out on the ground that they are grounds flowing from and forming the grounds of appeal against the interlocutory\' Ruling of High Court Kano in this suit dated 2nd September 1994 and also forming the grounds of Appeal in the proposed Notice of Appeal of the Appellant at pages 188-192 of the Record which was not filed and no appeal was lodged against the Interlocutory Ruling of the aforesaid High Court Kano'.

The lower court in its judgment as per Obadina J.C.A. in concluding the discussion on the preliminary objection held thus:-

'In the circumstances, it is my view that grounds 2, 4, 5, 6, 7, 9, 11 and 12 of the grounds of appeal are not grounds flowing and forming the grounds of appeal against the interlocutory ruling of the Kano State High Court dated 22/9/94. They are indeed grounds flowing and forming grounds of appeal against the final decision of the said court delivered on 28th March, 1996.'

I think for a thorough and proper treatment of this issue, it is pertinent that I examine some of the salient grounds of appeal complained of, and to do so I will reproduce the grounds hereunder. They read: -

'(ii) The learned trial judge erred in law and arrived at a wrong decision by holding that the decision of Kano State High Court in suit No. K/378/82 did not constitute res judicata to the present action.

(iv) The learned trial judge erred in law and arrived at a wrong conclusion by holding that the Defendant in suit No. K/378/82 is not a Defendant in the present case.'

It is a fact that when this suit was instituted in the High Court, Kano, the defendant, who is now the 1st respondent in this appeal moved an application that it be dismissed on the ground that it is an abuse of the process of court, and that the court lacked jurisdiction to grant the reliefs sought. In dismissing the application the learned trial judge made the following observation: -

'I examined the Ruling of Justice Rowland in suit number K/378/82 which has been attached to the affidavit in support of this application. I have noticed that the defendant in suit number K/378/82 is not a defendant in the instant case. While there was only one defendant in suit number K/378/82, there are now three defendants in this suit who, were not parties to the former suit, which was struck out not dismissed on ground of lack of jurisdiction. Since the former suit was

merely struck out, it can definitely not be a bar to this action involving different parties.'

The above is contained in the ruling of the trial High Court dated 22/9/94, but then the issue of res judicata cropped up again in the final judgment of the court, starting on page 76 of the printed record of proceedings, and particularly at page 89 of same where the learned trial judge reiterated his earlier stance thus: -

'Nevertheless I am still of the considered opinion that the ruling of Justice R. O. Rowland in suit number K733378/82 could not operate as an estoppel per res judicatam in the sense that the 3rd Defendant was not a party to the said suit and the issues are not completely the same with the issues in the instant suit which is not a challenge on the power of the Military Governor of Kano State to make the forfeiture order as contained in legal notice No. 7 of 1977. The said suit No. K/378/82 was merely struck out not dismissed, so that there is no bar to future litigation over the same subject matter in dispute, particularly as against the 3rd Defendant which titled (sic) to the property in dispute has not been established.'

Indeed the two observations on the two different occasions are very similar, that one can liken one to the other because the content of both of them portend the same. But then specifically, the words res judicata used in ground (2) of the appeal supra was used in the final judgment, not the ruling, and since this is so, it can safely be assumed that the said ground (2) was raised from the final judgment. I understand the argument of learned counsel for the appellant that the said grounds (2) and (4) of appeal in the lower court have the same purport as the ones in the 1st respondent\'s proposed notice of appeal which was exhibited to the application for leave to appeal. My view on this stance is that even if they are worded in verbatim, grounds (2) and (4)\'s complaints were based on the decision contained in the final judgment. The fact however remains that even though the issue of jurisdiction or abuse of process of court dealt with in the interlocutory decision of the trial court resurfaced in the final judgment, it does not preclude the 1st respondent from complaining against the later decision, once the ground of appeal emanated from that later decision, which is exactly the position here. The notice of appeal as can be seen from the record of proceedings referred to the final decision of the trial court as the decision appealed against in the lower court, and as I have said earlier on the portion of the judgment appealed against is directly from the final judgment not the interlocutory decision, even though the contents of related. In this vein the necessity, of seeking and obtaining leave to appeal in the lower court did not arise, as the notice and grounds of appeal were against the final judgment of the High Court, Kano, and they were filed within the time stipulated for appeal, to the Court of Appeal. The argument and authorities on the issue of the requirement of leave by the appellant/1st respondent by learned counsel for the appellant canvassed in its brief of argument, (though valid, if the appeal was against the interlocutory decision) is not relevant to this discussion. I therefore do not subscribe to it. In the light of the above reasoning I answer issue (1) supra in the affirmative, and dismiss the grounds of appeal (2) and (3) to which it is married, as I fail to see that the lower court erred.

I will now proceed to issue (2) supra. In returning the property in controversy to the appellant a letter emanating from the Military Administrator\'s office dated 25/9/79, and signed by the Military Administrator was addressed to the appellant. The letter reads: -

'Return Of Property 59b Lamido Crescent Kano'

With reference to council decision in conclusion 14(4a) 21 dated 21st September, 1979, I am glad to inform you that after careful consideration of your property at No. 59B Lamido Crescent which was earlier confiscated as a result of a Commission of Inquiry and subsequent Government white paper on the Commission\'s Report should be returned to you. Copies of this letter would be forwarded to the Cabinet office Kano, Ministry of Land and Survey Kano State, Solicitor-General Ministry of Justice Kano and the Supreme Headquarters Lagos for their information'

According to learned counsel for the appellant the letter was copied to the Kano State Oil and Allied Products Ltd to whom the property was allocated upon forfeiture in 1977. He contended that the exercise of returning the property was equally done under Decree No 37 of 1968, the same law under which the publication of forfeiture of the property in 1977 was made i.e. Investigation of Assets (Public Officers and Other Persons) Decree No. 37 of 1968. Learned counsel referred particularly to Section 12 of the Decree and argued that it is clear from that provision that the lower court lacked the competence to inquire into or question the validity of the act of the Military Governor of Kano State in the manner and mode of returning the Appellant\'s property in dispute to him as done through Exhibit D an instrument under his hand dated 25th September 1979. He further argued that the lower court is also precluded by Section 6 (6) (d) of the 1979 Constitution as amended from inquiring into or pronouncing on the validity of any action or things done by the Military Governments from 15th January, 1966 up till 30th September, 1979. He placed reliance on the cases of F. S. Uwaifo v. Attorney-General of Bendel State & ors (1982) Vol. 2 FWL, 246, and University of Ibadan v. Ademolekun 1967 1 All NLR page 213.

Learned counsel for the Respondent, on the other hand has argued that the learned trial judge assumed jurisdiction to try the case on the basis that Decree No. 37 of 1968 had been repealed by Decree No. 105 of 1979 some two years after the property in dispute had been forfeited, and that the ouster clause contained in Section 12 of the Decree was no longer applicable.

Now, I will reproduce and examine the said Section 12 of Decree No. 37 supra, which reads: -'The validity of any direction, notice order given or made, or of any other thing whatsoever done, as the case may be, under this Decree, or under any enactment or other law circumstances under which such direction, notice or order has been given or made or other thing whatsoever done shall not be inquired into in any court of law, and accordingly nothing in the provisions of chapter III of the Constitution of the Federation shall apply in relation to any matter arising out of this Decree or out of any enactment or other law repealed by this Decree.'

The above provision is very clear on the jurisdiction of a court of law on any action taken in pursuance of the action taken under the Decree. Perhaps, I should also reproduce provisions of this Decree that are relevant to this discussion. The preliminary part of the Decree states the following: -

'1 (1) There shall be, for the purposes of -

(a) investigation into the assets of public officers, whether or not at the commencement of this Decree such officers have ceased to be public officers;

(b) directing inquiries under this Decree into those assets if considered in the public interest; and;

(c) taking such further steps as may be authorized under this Decree, the several authorities hereafter referred to in this Decree in respect of matters within the scope of their authority as the appropriate authority.\"

Then Section 8 of the said Decree states: -

'8. (1) Without prejudice to any other provision of this Decree, the appropriate authority may

(2) Where the appropriate authority is satisfied that any person has been corruptly or improperly enriched by a public officer, the provision of the Decree in relation to the forfeiture of assets and liability to make repatriations shall apply with necessary modifications in respect of that person as they apply in respect of a public officer.

(3) The appropriate authority may make an order for the forfeiture of any assets of any public officer or other person, no matter how or whensoever acquired, if the assets whereby such public officer or other person has corruptly or improperly enriched himself or any other person, or whereby he has been so enriched, are no longer subsisting either at all or in such form that they could have been made the subject of an order of forfeiture under subsection (1) or (2) of this section.'

Now, I will go to the history of forfeiture of the property in dispute and its purported return. It is on record that the property was forfeited to Kano State Oil and Allied products limited in pursuance to the Investigation of Assets (Public Officers and other Persons) Decrees, 1968, as is evidenced in Exhibit 'V'. By virtue of Exhibit 'V', a Kano State legal Notice No. 7 of 1977, and described as the 'Public Officers and other Persons (Forfeiture of Assets) Order 1977', the property was vested in the Kano State Oil and Allied Products Limited as follows: -

\"2. (l) The shares and landed property the particulars whereof are specified in the first column of the schedule, being assets improperly acquired by the persons respectively named in the second column thereof, are hereby forfeited to the persons respectively specified in the third column thereof and shall by virtue of this order and without any further assurance vest in those persons specified in the said column from all encumbrances.\"

Then on 25th September 1979 the said property was returned to the plaintiff/appellant vide Exhibit \'D\'. By virtue of Section 12 of the \'Investigation of Assets (Public Officers and other Persons) Decree,\' supra (already reproduced), all the parties concerned in Exhibit 'V' could not have gone to court to challenge the forfeiture for they were forbidden from doing so. But then in 1979, the whole decree supra of 1968 was repealed vide Decree No. 105 of 1979, which states thus:, inter alia:-

'1. Subject to section 6 of the Interpretation Act 1964 (which relates to the effect of repeals expiration and lapsing of enactments) '

(a) the enactment set out in schedule 1 of this Decree shall cease to have effect upon the coming into force of the Constitution of the Federal Republic of Nigeria 1979\".

The applicable enactment here is as stated in (8) of the 1st schedule referred to above. The said section 6 of the Interpretation Act 1964 referred to in Section 1 of the 105 Decree supra states as follows:-

'6 (1) The repeal of an enactment shall not -

(a) revive anything not in force or existing at the time when the repeal takes effect;

(b) affect the previous operation of the enactment or anything duly done or suffered under the enactment;

(c) affect any right, privilege, obligation or liability accrued or incurred under the enactment;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the enactment;

(e) effect any investigation, legal proceeding or remedy in respect of any such right, privilege obligation, liability, penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as the enactment has not been repealed.

(2) When an enactment expires, lapses or -otherwise ceases to have effect, the provisions of sub section (1) of this section shall apply as if the enactment had been repealed.'

I think the position of the provisions of Decree No. 37 of the 1968 vis a vis their repeal by Decree No. 105 of 1979 has been clarified by the provision of the Interpretation Act reproduced supra. By virtue of the-Interpretation Act the ouster clause in section (12) of the Decree No. 37 of 1968 under which the forfeiture of the property in controversy was made, went with the entirety of the provisions, and it will be wrong to assume that just because that law had been repealed, the ouster clause that prevented a party from seeking legal remedy will now be revived in order to vest a court with jurisdiction. Whatever obtained as at the time the Decree No. 37 of. 1968 had life will continue up to the point of repeal, and it cannot be said ' that the repeal of that law would two years after the act done there under negatively affect the act done when the Decree was still alive and in existence. When an act is repealed it is taken as though it never existed, except the actions, which were commenced, executed and concluded at the time the act was in existence. See Suretees v. Ellison 9 B & C 750, and Kay v. Goodwin (1830) 6 Bing 756.

I will now consider the provision of section 6 (6) (d) of the 1979 Constitution which learned counsel for the appellant relied upon on the preclusion of the lower court from enquiry or pronouncing on the validity of any action or things done by the Military Governments from 15th January 1966 up to 30th September, 1979. This provision of the supra Constitution reads as follows: -

'6. (l) the judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.

(6) The judicial powers vested in accordance with the foregoing provisions of this section-

(d) shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.'

Now, it seems to me that by canvassing the argument learned counsel for the appellant has canvassed supra, he is in retrospect alluding that the cause of action accrued from when the property in controversy was returned to the appellant i.e. from when Exhibit \'D\' was written. I say so because if he was postulating the opposite i.e. that the cause of action accrued when the property was seized, then by instituting the action in court, the appellant was equally guilty of the same wrong action of approaching the trial court to question and determine any issue or question as to the competence of the Military Government to seize the property. That very seizure/forfeiture came within the ambit of action envisaged by section 6 (6) (d) supra. In that vein, it could be said that the trial court was equally not competent to inquire into the validity of the act of the Military Government. However, since the appellant\'s argument is premised on the fact that the cause of action accrued from when the property was returned to him, I will confine myself to this fact, for the time being, and consider the conclusion of the lead judgment of Sowemimo, J.S.C. (as he then was) in the Uwaifo\'s case supra, which reads: -

'Reference, by counsel to section 6 of the Interpretation Act is irrelevant. The main point which this appeal must be decided upon, is what is the effect of section 6 of the Constitution of 1979 especially of section 6 sub section 6(d). The effect of the forfeiture of the appellant\'s properties, having regard to the existing laws, viz, Decree No. 10 of 1976, Edict No. 10 of 1977 and Decree No. 18 of 1977 and section 6 subsection 6(d) of the 1979 Constitution reads:

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That disposes finally of all the extensive arguments of learned counsel for the appellant and the appeal completely fails.

The judgment of the High Court of Bendel State, (Ekeruche, C.J.) and the Federal Court of Appeal in Benin are hereby upheld. The orders made by the lower courts are affirmed and the appeal to this court is hereby dismissed with costs of N300.00.\"

It is instructive to note that the claim in the above case was predicated on the forfeiture of the properties of the appellant, and its validity and not their return, as is in the instant case. The ouster clause in section 12 of Decree No. 37

of 1968 was also in issue in that case and the argument revolved around the competence of the trial court to assume jurisdiction because the said Decree No. 37 had been repealed. Of course, the trial court said it was not competent to entertain the suit forfeiture, and the Court of Appeal, as in this case affirmed the decision of the High Court of Bendel State. 1 must emphasise here however that the difference in the cause of action may tend to give the case at hand a different complexion. The effect of Section 6(6)(d) of the 1979 constitution is the same if the return of the property in controversy as per Exhibit D is legal and valid; and if the cause of action properly arose from the return of the property. This aspect of the appeal will be more thoroughly dealt with later in this judgment. As a matter of fact the next issue (issue 3) in the appellant\'s brief of argument revolves around the cause of the appellant\'s action and what it entails.

In arguing this issue, learned counsel for the appellant has submitted that the lower court was in error in holding that the appellant\'s cause of action against the 1st respondent arose on 3rd June, 1977 when the property was forfeited to Kano State Oil and Allied Products Limited, and that the appellant by this, suit was challenging the forfeiture of his property to the 1st respondent. According to learned counsel the appellant has nothing to do with challenge of the forfeiture of his property to Kano State Oil and Allied Products Limited since the property had since 25l September, 1979 been unequivocally returned to the appellant, which return none of the respondents challenged in court, neither was it challenged by Kano State Oil and Allied Products Limited, the predecessor to the 1st respondent. Perhaps I should reproduce the relevant appellant\'s amended statement of claim before I proceed with this argument. In his amended statement of claim the following averments were made: -

'5. Dring the General Murtala Mohammed/Obasanjo\'s regime, without hearing the plaintiff and more so when the plaintiff was not a public officer, the Kano published in a Legal Notice of 3rd June, 1977 under Public Officers and other persons (forfeiture of assets) Order 1977 forfeiting the plaintiff property to Kano State Oil and Allied Products Limited.

6. The plaintiff upon seeing the Legal Notice petitioned to both the Federal and Kano State Government over the publication and a Federal Investigation Panel of Inquiry was set up headed by Alhaji Sani Wali ACP otherwise called Alhaji Sani Wali ACP Inquiry and the panel cleared the plaintiff of any wrong doing and held the plaintiffs'then directed Kano State Government to reconsider the matter in order to redress the injustice done to the plaintiff. The plaintiff pleads the Supreme Headquarters letter dated 5th June 1979 written to the Kano State Governor/Military Administrator Group Captain Shekari.....

7. The plaintiff, states further that Kano State Government also carried out its investigation and found the property was wrongly confiscated from the plaintiff. Thereafter the Kano State Government under the hand of the Governor of Kano State then by letter dated 25th September, 1979 wrote to the plaintiff returning the plaintiffs property to him with copies of the letter forwarded to the Cabinet Office, Kano, Ministry of Land and Survey Kano State, Solicitor General Kano State amongst others.

8. The Kano State Government also by letter dated 4th October 1979 also wrote through its Ministry of Land and Survey to Kano State Oil and Allied Products Limited Kano conveying the return of plaintiff s property to him and stating further thus. \"In view of above, all our records have now been amended over the title in favour of Alhaji M, Madi Abubakar and your company name has been deleted from our records over the title and your application over the properties has now been cancelled\'\'. The plaintiff pleads this letter and the 1st, 2nd, and 3rd Defendants are given notice to produce the original of the document at the trial.

9. By another letter dated 11th April 1980 the Kano State Government through the Secretary to the. State Government Cabinet Office Kano wrote to the plaintiff confirming that the plaintiff is the rightful owner of the property herein and that same property was returned to the plaintiff.

10. In spite of the knowledge of the Kano State Oil Mills and Allied Products Limited (of which the 3rd Defendant is its successor in interest) of the plaintiff's ownership of the property, the 3r Defendant was wrongfully continuing trespassing on the plaintiff property and prevented the plaintiff from enjoying his property.

14. The Kano State Government through the solicitor General by another letter dated 29th July 1993 wrote to the Managing Director of the 3r Defendant directing the immediate release of the plaintiff s property to him.

15. In spite of all peaceful entreaties to the 3rd Defendant to stop its trespass and handover the plaintiff's property, the 3rd Defendant without any right or title over same has refused to stop the trespass and the plaintiff has suffered loss and damage.

17. (a) A declaration that the plaintiff is the owner and the holder of a statutory right of occupancy over the land, buildings and appurtenance situate at 59B Lamido Crescent by Certificate of Occupancy No. LKN/RES/82/1622 and is entitled to the full ownership rights over same free from trespass from the Defendants and their agents.

(b) A declaration that the 3rd Defendant continued entry and occupation of plaintiffs property since October 1979 is unlawful, illegal and trespass.\"

It is the argument of learned counsel for the appellant that a close perusal of the appellant\'s statement of claim would show that the claims of the appellant have nothing to do with any challenge of forfeiture of the property. Learned counsel for the 1st respondent has submitted that a court of law is not restricted to the examination of a plaintiffs statement of claim for the purpose of discovering the existence or otherwise of a cause of action or jurisdiction, and referred to section 74(1)(a) and (1) of the Evidence Act. He further submitted that a court of law is bound on the performance of the examination to take judicial notice of all laws or enactments and subsidiary legislation made there under having the force of law at the material time in force.

The said section 74 (1) (a) and (1) of the Evidence Act, Cap. 112 Laws of the Federation of Nigeria 1990 states the following: -

'74. (1) The court shall take judicial notice of the following facts:-

(a) all laws or enactments and any subsidiary legislation made there under having the force of law now or therefore in force, or hereafter to be in any part of Nigeria;

(b) All general customs, rules and principles which have been held to have the force of law in or by any of the superior courts of law or equity in England, the Supreme Court of Nigeria or the Court of Appeal or by the High Court of the State or of the Federal Capital Territory, Abuja or by the Federal High Court and all customs which have been duly certified to and recorded in any such court.'

I cannot discern the relevance of the supra reproduced provisions of the Evidence Act to this discussion. To say that it does not fall within the context or the purport of the issue is an understatement. What is presently being discussed is the cause of action in a case, not its judgment. The plank of this discussion is the determination of the cause of action in this case and when it arose. Authorities abound on what determines it and its accrual. It is a cardinal principle of law that to ascertain a cause of action, the immediate materials a court should look at are the writ of summons and the averments in the statement of claim, for it is by examining them that a court can satisfy itself on the actual grouse of a party and the remedy or relief it is seeking from the court. After determining the cause of action then by the very averments, the court can discern the time that a cause of action arose. See Alhaji Usman Dantata v. Mouktar Mohammed (2000) 7 NWLR (Pt. 664) page 176; Adimora v. Ajufo 1988 3 NWLR part 80 page 1, and Akibu v. Oduntan (2000) 13 NWLR part 685 page 446.

I will now go further to define a cause of action. A cause of action arises from circumstances containing different facts that give rise to a claim that can be enforced in a court of law, and thus lead to right to sue a person responsible for the existence, either directly or by extension of such circumstances. There must in essence be wrongful act of a party (i.e. the party sued), which has injured or given the plaintiff a reason to complain in a court of law for remedy of consequent damage to the party aggrieved.

A cause of action as defined in Stroud\'s Judicial Dictionary as set out in the case of Savage & ors. v. Uwechia (1972)3 S.C. 214 at 221, by Fatayi-Williams, J.S.C. (as he then was) is:-

\"The entire set of circumstances giving rise to an enforceable claim\". The learned Supreme Court justice went on to say thus:- \"To our mind; it is , in effect, the fact or combination of facts which give rise to a right to sue and it consists of two elements the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage.\"

See also Ibrahim v. Osun (1988) 3 NWLR (Part 82) page 251.

In view of the above principles, a very careful perusal of the averments in the amended statement of claim which I have reproduced above discloses that the cause of action is the forfeiture and return of a block of flat situate at 58B Lamido Crescent, now 15 Lamido Road Nassarawa Kano, which interest was vested in the plaintiff/appellant before 1977, but which was forfeited to the predecessor in title of the 1st respondent, and was purportedly returned to the appellant in September 1979. If the property had not been forfeited to the said predecessor of the 1st respondent, the 1st respondent would not have acquired it, to necessitate the plaintiff/appellant suing the 1st respondent for its ownership. Again, if the property had not been forfeited in the first place, all the correspondences pleaded in the amended statement of claim would not have been exchanged, and the necessity of returning the property vide Exhibit D would not have arisen. Of course it was the forfeiture in the first place that triggered the whole process of correspondences and a chain of reactions that culminated into the tussle for ownership of the property in dispute in court. One must read the Statement of Claim as a whole to understand a cause of action, and not some averments in isolation. I agree that the plaintiff/appellant sought declaration of title to land vide paragraph 17(a) of the amended Statement of Claim, but how does one reconcile that averment with the averments in paragraphs (2), (3), (4), (5), without reading them all together' For a proper understanding of the history of the property in dispute it behoves on any trial

judge to read these other paragraphs together with paragraph (17) of the amended Statement of Claim: To read only paragraph (17) in isolation will be misconstruing the whole case.

In the circumstance, even though the 1st respondent was not a party to the damage done the appellant, it took over the property in dispute from the Kano State Oil and Allied Products Limited from whom the property was acquired, and so by virtue of succession or whatever, it inherited its liability. I refuse to subscribe to the appellant's contention that the appellant\'s statement of claim did not contain any complaint on anything done in 1977 nor complained of forfeiture of the property in dispute. It is pertinent that I ask a question at this stage, and the question is if the appellant did not complain of the forfeiture, why did he deem it necessary to trace the history of the property as revealed in the amended Statement of Claim' Why did he not commence the history of the property from when he applied and was granted the property vide Certificate of Occupancy No. LKN/RES/82/1622. Obviously he knew he had to reveal to the court the genesis of his problem with the defendants/respondents from its inception. From the totality of the above discussion, I am satisfied that the property in dispute was forfeited vide the (forfeiture of Assets), Order, 1977. In this wise I fail to see that the lower court erred in holding as follows;

'It is also not (sic) dispute that the cause of action in this case accrued before the commencement of the 1979 Constitution, when Decree No. 37 of 1968 was repealed. Indeed, the cause of action arose on the 3rd of June 1977, when the property in dispute was forfeited to the appellant. My answer to issue three is resolved in favour of the 1st respondent, for I fail to see that the lower court erred in holding that the appellant\'s cause of action as disclosed in his amended statement of claim arose on 3rd June, 1977, and so ground of appeal No (6) to which it is married fails, and it is hereby dismissed. I also resolve issue (2) supra in favour of the 1st respondent, and dismiss grounds of appeal Nos. (4) and (5) which they cover.'

I will now deal with the fourth issue in the appellant\'s brief of argument. In canvassing argument under this issue, learned counsel for the appellant submitted that the lower court was wrong in setting aside the findings of the court of first instance on Exhibit 'X' series tendered by 1st respondent in relation to Exhibit \'D\', and not appealed against by the 1st respondent. Learned counsel for the appellant contended that it is settled law that the power and jurisdiction of an appellate court is limited by the complaints brought before it through grounds of appeal, and it cannot disturb finding of facts and conclusions reached by the court which are not appealed against. He placed reliance on the cases of Alii v. Aleshinloye (2000) 6 NWLR (Pt. 660) page 177; and Chief Bairako v. Chief Edeh Ogwuile (2001) 4 S.C. (Pt. 11) page 96.

In reply to the above submission the learned counsel for the 1st respondent referred to ground of appeal No. (1) raised by him in the lower court, submitting that the effect of the said ground No. (1) is not only an expression of disagreement and dissatisfaction with all the findings of facts of the learned trial judge, but also a clear presentation of the issues, conclusions, findings and insinuations inherent therein that in effect have the implication of conferring title over the propertyon the appellant for determination before the lower court. Perhaps, I should reproduce the said ground of appeal at this juncture. Ground of appeal No. (1) in the Court of Appeal reads as follows: -

'(i) The learned judge of the Kano State High Court erred in law and arrived at a wrong conclusion when he held in his judgment that the Respondent is still the lawful owner of the premises in question.

Particulars of Error:

(a) Even though it was not in dispute that the plot of land on which the building was erected belonged to the Respondent, there was ample evidence that it was the Appellant\'s money that was used in developing the same.

(b) Exhibit 'V' the legal notice forfeiting the property and vesting same on the Appellant was tendered before the court.

(c) There was also Exhibit 'X3' which was an earlier judgment of the Kano State High Court on the premises in question further validating and concretising the forfeiture in Exhibit 'V'.

(d) There were also Exhibits 'U', 'Ul', 'Wl' and 'X' ' 'X16' tendered on the issue.

(e) But the lower court closed its eyes to implication of all these documents and then relied only on exhibit D in declaring the Respondent as the owner of the premises in question.'

The findings complained not to have been appealed against by learned counsel for the appellant read as follows: -

'Meanwhile, I have found out as a fact that the plaintiff was issued with certificate of occupancy number LKN/RES/RG/82/1622 (exhibit A) over the disputed property at the instance of the Military Governor of Kano State. This must definitely have been done under the Land Use Act, 1978. It should be noted that neither Kano State Oil and Allied Products Limited challenged the validity of this document in court. The 3rd defendant is merely alleging that Exhibit A was fraudulently obtained, but I am unable to comprehend the fraud committed by the plaintiff'I am of the view that Exhibit H has been validly issued and obtained...Finally, in view of all the foregoing reasons, issue number one hitherto

formulated should be and is accordingly resolved in the affirmative in favour of the plaintiff i.e. from the totality of the evidence adduced at the trial, the plaintiff is still the owner of the property covered by certificate of occupancy number LKN/RS (sic) 82/1622 and more particularly, described as No 15, Lamido Road, Nassarawa, Kano formerly, number 59B, Lamido Crescent, Nassarawa, Kano.'

I have carefully perused these findings vis a vis the reproduced ground (1) of appeal supra, and my strong belief is the said ground arose from the findings. I cannot fathom why the appellant would be quick to complain that the findings were not appealed against in the lower court, when the record of appeal clearly speaks for itself. It is so clear that when one reads the ground and the findings side-by-side one will have no iota of doubt in one\'s mind that, one relates to the other. It is settled law that grounds of appeal are supposed to represent an appellant\'s complaint of a decision he is not satisfied with, and which he has grouse against, and wants an appellate court to correct and remedy. See Udeorah v. Nwakonobi (2000) 1 NWLR (Pt.640) page 239, and Piemen v. Momodu (1983) 1 SCNLR page 188. Once an appellant has succeeded in expressing his complaints in a ground of appeal, and such complaints are supported by the record of proceedings that such complaints are related to findings in the judgment, and then there is definitely an appeal on those findings. With due respect, here it seems that either learned counsel for the appellant is intent on misleading, this court, or he is inapprehensive of the position of the law. This same argument and reasoning applies to the finding on exhibit \'X\' series.

As a matter of fact, when one reads the 1st respondent\'s brief of argument (as an appellant) in the lower court, one will find the submissions adequately covering the complaints on the findings. See pages 357 - 359 of the printed record of proceedings. The lower court was right in my view (after a. careful consideration of exhibit \'X\' series and exhibit D) to have found thus:-

' A sober consideration of Exhibits D and XII together clearly shows that the property in dispute has not been returned to the 1st respondent by the Government of Kano State which had earlier forfeited the property of the appellant.'

The lower court did not so find the above out complaint and a corresponding ground of appeal to warrant the finding. In the light of the above discussion, my answer to the fourth issue supra is in the affirmative, and ground of appeal No. (7) to which it is related fails, and it is hereby dismissed.

Then issue (5), which revolves around abuse of the process of court. The finding of the lower court, which the appellant is attacking under the ground of appeal married to this issue can be found on page 450 of the printed record of proceedings and it read thus: -

'In that regard, it is my view that the decision in suit No. K/378/82 that the court lacked jurisdiction to entertain the action constitutes res judicata to the present case; accordingly, the learned trial court in the present case on appeal had no jurisdiction to entertain the suit and was wrong to have heard and determined the suit as he did. When the previous suit No. K/378/82 was struck out for lack of jurisdiction, the only remedy left to the 1st respondent was to appeal against the order striking out the case and not to open it again by way of a fresh action.'

It is the contention of learned counsel for the appellant that the main plank upon which the lower court based its decision was the ruling of the High Court in suit No. K378/82 delivered on 8th August 1983, which was held to have created a bar to the new suit and the appellant\'s new suit K/291/94 the subject matter of this Appeal is caught by the doctrine of res judicata.

Learned counsel for the 1st respondent has submitted that the learned justices of the lower court were right in holding that suit No. K/378/82 constituted res judicata to suit No. K/291/94 that gave rise to this appeal, med counsel placed reliance on the cases of Olafunmise v. Falana (1987) 1 NWLR (Pt.47), Bala v. Bankole 1986 3 NWLR (Pt. 29) page 14; Fadiora v. Gbadebo (1978) 1 LRW 97; Aname v. Efriyea 6 W.A.C.A. page 169, and Dzungwe v. Gbishe (1985) 2 NWLR part 8 page 528. Learned counsel has further submitted that putting suit No. K/378/82 and K/279/94 side by side, it will be discovered beyond doubt that the reliefs that were claimed in both suits are the same and are basically for declaration of ownership to the property in dispute. The parties are the same and the courts are the same courts of competent jurisdiction.

At this juncture, it is imperative that I examine the claim that formed the basis of the ruling in suit No. K/378/82. The claim as per the writ of summons reads is as follows: -

'(1) The plaintiff is the registered holder of the certificate of occupancy No. KN184 in respect of the immovable property situated at No. 59B Lamido Crescent, Nassarawa in Kano.

(2) By a development agreement the Kano State Oil Mill and Allied Products Limited developed the said property for the plaintiff and have been collecting rents in respect of, the premises in the last ten years.

(3) Under the provisions of the Investigation of Assets Public Officers and other persons Act 1968, the said

immoveable property was forfeited to the Kano State Oil Mills and Allied Products Limited. Under the Kano State Legal Notice No. 7 of 1977.

(4) The plaintiff claims that he was not given the opportunity to be heard before the forfeiture was made and that the report of investigation conducted on behalf of the Federal Military merit of Nigeria by Alhaji Sani Wali A.C.P. of Nigeria Police Headquarters Lagos found that the property was not liable to the forfeiture. The plaintiff claims against the defendant as follows: -

(a) A declaration that the forfeiture made in favour of the defendant a limited liability company on a matter in which the interest of the plaintiff a non public officer was involved and without giving him the opportunity to be heard was a violation of the rules of natural justice and also against Section 22 of the Constitution of the Federal Republic of Nigeria 1963 and section 33 of the 1979 Constitution of the Federal Republic of Nigeria and should be set aside.

(b) A declaration that the circumstances of this case did not render the said immoveable property at No. 59B Lamido Crescent Kano liable to forfeiture.

(c) A declaration that the plaintiff is the rightful owner of the said Immoveable property and or order that the Kano State Oil Mill and Allied Products Limited returns the said immoveable property to the plaintiff forthwith.

(d) The plaintiff also claims annual rent of 48,000 (sic) per annum for the period from September 1979 to date.' In his ruling on the application to strike out the suit for want of jurisdiction the learned judge struck out the suit for want of jurisdiction. The plaintiff/appellant in paragraph l (a) of the amended Statement of Claim did give the description of the property in dispute as originally bearing No. KN184 in the certificate of occupancy covering it. In paragraph (5) the forfeiture of the land was pleaded, and in paragraph (10) the position of the 1st respondent as being the successor in interest of 1st defendant in suit No. K/38/82 was also pleaded. Looking at the history of the property in dispute as pleaded or claimed in the two suits, i.e. suit No. K/378/82 and this suit No. K/291/94, and all other facts side by side, there is no doubt in my mind, that the parties are the same, the subject matter of the litigation is the same, and the reliefs sought are the same. Both courts are Kano State High Courts with competent jurisdiction to adjudicate in the matter. In this vein I refuse to endorse the argument of learned counsel for the appellant that the parties in the two cases are not the same and that the claims and reliefs sought in the two cases are completely different, I agree that the authorities of Sosan v. Ademuyiwa (1986) 3 NWLR (Pt.27) page 241; Ezewani v. Onwodi 1986 4 NWLR (Pt. 33) page 27, Udo v. Obot (1989) 1 NWLR (Pt. 95) page 59 are clear on the principles governing estoppel per res judicata, but it is my belief that they will only be applicable and relevant to this discussion if the principles and ingredients are met, but in the instant case they are not.

Learned counsel for the 1st respondent has drawn this court\'s attention to an excerpt of the trial court\'s judgment which reads as follows: -

'The said suit No. K/378/82 was merely struck out not dismissed so that there is no bar to future litigation over the same subject matter in dispute...\"

Learned counsel, has argued that once a matter is struck out for want of jurisdiction, the remedy open to an aggrieved party is to appeal, and not to re-open the case again by way of fresh litigation. In this vein, I endorse the lower court\'s pronouncement in the lead judgment, which reads: -

'When the previous suit No. K/378/82 was struck out for lack of jurisdiction, the only remedy left to the 1st respondent was to appeal against the order of striking out the case and not to open it again by .a fresh action.'

In addition to the authorities referred to above on the issue of res judicatam I would like to re-echo the words of Kutigi, J.S.C. (as he then was) in the recent case of Ekukuje v. Akwido (2001) 3 NWLR (Pt. 700) page 261, where he reiterated the principles of estopel per res judicatam thus: -

'It is settled by countless number of judicial authorities that a plaintiff is caught by the plea of estoppel per rem judicatam where -

'1. The parties (or their privies as the case may be) in the previous case are the same as in the present case.

2. The issue and subject matter or res litigated upon in the previous action is the same as in the present action.

3. The adjudication in the previous case must have been given by a court of competent jurisdiction.

4. The previous judgment relied upon must have finally decided the issues between the parties.\"

I am satisfied that in this case all the ingredients above have been met, \' (even No. 4) for that previous decision of 8/8/83 completely threw away the baby and the bath water, so to speak. I say so because the first trial court completely stripped itself of jurisdiction to hear and determine the action. The court that stripped itself of jurisdiction was of concurrent jurisdiction with the court that eventually heard the case on the merit. Once a court pronounces that it lacks

jurisdiction to hear and determine. a case, then a court of concurrent jurisdiction has no business in conferring upon itself with jurisdiction.

In the light of the reasoning I answer issue (5) supra in the affirmative, and I hold that ground (8) of appeal to which it is married lacks merit and so hereby dismissed.

The last issue formulated for determination in the appellant\'s brief of argument is in respect of the striking out of appellant\'s brief of argument relating to his cross-appeal, at the lower court. In arguing this issue, learned counsel for the appellant has submitted that the lower court in the circumstances of this case wrongly interpreted the provision of Order 6 Rule 7 of the Court of Appeal Rules 1981 as amended. According to learned counsel, the appellant who was the 1st respondent in the court below filed his cross-appeal within time and by virtue of Order 6 Rule 7 of the Court of Appeal Rules 1981, as amended included arguments relating to his cross-appeal in his respondent\'s brief of argument in that court. He further submitted that by virtue of the above rule which provides that arguments on cross-appeal-may be included in the main respondent brief without filing a separate brief for his cross appeal, the appellant had filed his cross appellant\'s brief of argument within time, when he was granted extension of time within which to file his main brief of argument.

In reply, learned counsel for the 1st respondent has argued that the application for extension of time upon which the said extension was premised was specific on the prayer sought. It is on record that the motion on notice of the appellant/1st respondent, brought pursuant to Order 3 Rule 1 of the Court of Appeal Rules sought the following orders: -

\"(a) Extending the time within which the 1st Respondent will file his Brief of Argument in this case,

(b) Deeming as duly filed and served the 1st Respondent\'s brief, the appropriate filing fees having been paid.\"

The application was granted and the orders as prayed in the following words of the Justice presiding:-

'Time is extended up to today for the 1st respondent to file his brief of argument out of time. The proposed brief attached is deemed duly filed and served as of today.'

The argument of learned counsel for the 1st respondent is premised on the fact that the appellant did not specifically sought for extension of time in respect of his argument on his cross-appeal, which was incorporated in his main brief of argument. Learned counsel has justified the action of the lower court in striking out the appellant/1st respondent\'s submissions on his cross-appeal in his brief, of argument on the basis that the motion for extension of time did not cover the cross-appeal, and indeed the order of the court below in respect of the motion was confined only to the main respondent\'s brief of argument, as it was silent on the cross-appeal. It is instructive however to note- that the second order on deeming, supra deemed the whole brief of argument as filed, not a part or piece of it. I will come back to this aspect of this argument later.

By virtue of Order 6 Rule 7 of the Court of Appeal Rules 1981 as amended,

'A respondent may without leave include arguments in respect of cross-appeal, a respondents notice in his brief for the original appeal. By virtue of Rule 9(b) of the said order: -

'The appellant shall be entitled to open and conclude the argument, where there is a cross-appeal or a Respondent\'s notice, the appeal and such cross-appeal a Respondent\'s notice, shall be argued together with the appeal as one case and within the time allotted for one case.'

It is as clear as crystal from the above provisions that the arguments in respect of a cross-appeal are, allowed to be incorporated in a respondent\'s main brief of argument. That the above provisions envisage only when the briefs are filed timeously, and not when they are filed out of time, as argued by learned counsel for the 1st respondent is untenable. The appellant in the court below as 1st respondent sought extension of time to file his respondent\'s brief of argument, and the above provisions talk about respondent\'s brief of argument that may have arguments in respect of cross-appeal therein, so how can it be said that just because he did not specifically ask for extension of time for filing or including the argument on cross- appeal, the said provision does not avail him' I don\'t think it is right. It is like putting extraneous matters into the rules. There is no ambiguity whatsoever in the provisions.

Moreover, as I have observed earlier, the lower court when it granted the prayers sought for extension of time, it said the brief was deemed as properly filed, it did not say the argument, or brief in respect of the main appeal only. The whole brief of argument in its entirety was accepted, and -for all intents and purposes the whole content of the brief formed part of the processes of the court below. On this score, the court below erred in refusing to consider the appellant\'s cross appeal* and in striking out the cross-appellant\'s brief of argument, as contained in its lead judgment which reads as follows: -

'In the circumstances, it seems to me the cross-appellant\'s brief filed by the cross-appellant as contained in the 1s respondent/cross appellant\'s brief dated 23rd day of March, 1998 and filed on 25/3/98, as it relates to the cross-appeal

is not properly before the court. The cross-appellant\'s brief is accordingly incompetent and it is hereby struck out.'

This last issue is thus resolved in favour of the appellant, and its related ground No. (9) of appeal succeeds. Now, what will be the effect of this succeeds to the overall appeal' Before I can provide an answer to this question I will have to examine what the cross-appeal complained on. Its complaint was on the refusal of the learned trial judge to award damages for trespass to the 1st respondent/appellant after it had found the 1st respondent liable to him for trespass. Learned counsel for the appellant has urged this court to evoke the provision of section 22 of the Supreme Court Act.

The success of this single issue will affect the appeal positively only if this court has found the 1st respondent liable to the appellant in this judgment. It is then that this court can consider the propriety or otherwise of awarding the damages for trespass. Having found that the property in dispute properly and legally vests in the 1st respondent, the issue of trespass does not arise, and where there is no trespass, the claim for damages cannot he considered. They are all linked together. In the circumstances even if the court below had considered the cross-appeal, the over all end result of the cross-appeal would have been the same i.e. failure.

The law is settled that it is not every error or slip that will result in the reversal of a decision on appeal. For such error to have that effect it must have occasioned a miscarriage of justice, and in this case, it has not. See Oyefolu v. Durosinmi (2001) 16 NWLR (Pt. 6738) page 1, and Akpan v. Otong (1996) 6 NWLR (Pt. 476) page 108, and International Bank for West Africa Limited and Another v. Pavex International Company (Nigeria) Limited (2000) 7 NWLR (Pt. 663) page 105.

In the final analysis, this appeal fails in part. The judgment of the Kaduna division of the Court of Appeal in as far as the main appeal is concerned is affirmed in its entirety. The finding on the cross appeal is set aside. I will make no order as to costs.

Judgment Delivered By

Idris Legbo Kutigi J.S.C.

I read before now the judgment just delivered by my learned brother Mukhtar J.S.C. I agree with her conclusion that the appeal succeeds in part. The judgment of the lower Court in respect of affirmed, while its decision on the cross-appeal is set aside. I also make no order as to costs.

Judgment Delivered By

Umaru Atu, Kalgo J.S.C.

I have had the opportunity of reading in advance the judgment of my learned brother Mukhtar J.S.C. just delivered. I agree with the reasoning and the conclusions reached therein. The main appeal fails and it is dismissed but the cross appeal succeeds and it is allowed. I make no order as to costs.

Judgment Delivered By

Niki Tobi, J.S.C.

I have read in draft the judgment of my learned brother, Mukhtar, J.S.C, and I agree with him. I want to add to the strength of the judgment in the area of res judicata.

While learned counsel for the appellant submitted that the principles of res judicata do not apply, learned counsel for the respondents submitted that the principles apply.

The expression, res judicata means 'a thing adjudicated'. It came out from the original expression, res adjudicata. The aim of the principle is to put to an end a matter that was previously litigated by a competent court of law. It is to avoid duplicity or multiplicity of litigation. The principle is designed to save so much litigation time. The essence of the principle is that a previous judgment or a judgment previously handed down will constitute a bar to a present action if certain conditions are satisfied.

The conditions are as follows:

(1) the parties in the previous action and the present or current action must be the same. (2) The subject matter must be the same, (3) The issues must be the same. (4) The court that decided the previous action must be a court of competent jurisdiction.

Let me examine the above seriatium. Parties include privies in blood and estate. Executors (including executor de son tort), trustees, beneficiaries, assignors, assignees, lessors, lessees and guardian litem are some examples of parties.

The issues need not be the same like Siamese twins in feature and outlook. Once they are substantially the same in oneness, res judicata will apply. The court\'s interest is in respect of the live issues and not those, which are peripheral or not germane to the live issues. If the previous matter was heard and decided by a court of incompetent jurisdiction, the principle or doctrine of res judicata will not apply, because the decision is null and void ab initio. A decision, which is a nullity, will not, in law, give rise to the principle or doctrine of res judicata.

In considering the application or applicability of the principle or doctrine, the court should remind itself of the tricks the parties, at times, play to beat its application. This is the only way to meet such parties' full length rather than half-length. This arises when a party, at times, include nominal or docile parties and he will be quick in telling the court, for example, that the previous matter had three defendants as opposed to the current one which has four defendants. The inclusion of the fourth defendant could be a charade or farce. There are also instances when the party includes an additional relief or reliefs, which are inactive, as functioning only as appendage or peripheral to the main issue or issues to the extent it does not add anything substantial to the main issue or issues. There are times when parties play with words to present a camouflage that the issues are different when in reality they are not. The trial Judge, in the use of the eyes of an eagle, will be able to remove the chaff from the grain and decide whether the principle or doctrine of res judicata is applicable or inapplicable.

The property in dispute in Suit No. K/378/82 is at No. 59 Lamido Road, Kano. So too is the property in dispute in Suit No. K/291/94. The reliefs as itemised on pages 447 to 449 of the record by the Court of Appeal are substantially the same. The parties in the dispute are materially or substantially the same: Alhaji Madu Bukar v. Bebeji Oil and Allied Product Ltd, formerly known as Kano State Oil and Allied Products Ltd. It is in the light of the above that I agree with the Court of Appeal that the two suits have substantially the same parties and reliefs.

I abide by all the orders given the judgment of learned brother Mukhtar J.S.C, including that of no order as to costs.

Judgment Delivered By

Ikechi Francis, Ogbuagu J.S.C.

This is an appeal against the decision of the Court of Appeal, Kaduna Division, (hereinafter called (\'the court below'), delivered on 13th December, 1999: setting aside the judgment of the trial court delivered on 28 March, 1996 and declared the said Judgment and all the proceedings relating to the suit filed by the Appellant including the order of costs awarded in his favour, a nullity. It thereupon, struck out the claims of the Appellant in the said suit. Dissatisfied with the said decision, the Appellant has appealed to this Court on nine (9) grounds of appeal.

The facts of the case briefly stated, are that action at the Kano State High Court against the Respondents. In paragraph 17(a) & (b) of the Amended Statement of Claim at pages 143 of the Records, he asked for two (2) Declarations. In paragraph 17(c), he claimed N20 million aggravated damages for trespass against the 3rd Respondent. In paragraph 17(d), he claimed N5 million damages jointly and severally, against the Respondents for wrongful deprivation of the rent he would have earned on the property from 1979 till the date of filing the suit (i.e. 24th October 1995). In paragraph 17 (e), he prayed for an Order directing the Respondents whether by themselves, servants, tenants, agents, privies or whosoever may be in the premises without his consent or authority to vacate immediately and give up part of the whole property. In paragraph 17(f) he asked for perpetual injunction. The 1st Respondent, who was the 3rd defendant, filed a Statement of Defence. The 2nd and 3rd Respondents, who were the 1st and 2nd Defendants, did not file any Statement of Defence.

After the trial, the learned trial Judge - Wada Umar Rano, J., in his Judgment at pages 76 to 94 of the Records (not-76 - 79 as appear at page 2 of the 1st Respondent\'s Brief), found in favour of the Appellant in some of the claims, adjudged the 1st Respondent a trespasser, awarded the sum of N678, 000.00 (six hundred and seventy eight thousand naira) in respect of the claim in paragraph 17(d) (supra). Aggrieved by the Judgment, the 1st Respondent appealed to the court below on fourteen (14) grounds of appeal. The Appellant cross-appealed against the failure or refusal of the trial court, to make an award in respect of his claim in 17 (c) (supra). The court below, allowed the appeal, and struck out the cross appellant\'s brief as incompetent, hence the instant appeal. The issues formulated by the parties for determination - six (6) by the Appellant and four (4) by the 1st Respondent, have been reproduced in the lead Judgment of my learned brother, Mukhtar, J.S.C.

In my respectful but humble view, a critical and careful perusal of the Records, the crux of the instant appeal, appear at pages 444 to 445 thereof. At page 444, the following appear inter alia:

'In this case on appeal I (i.e. Obadina, J.C.A.) think trial court has failed to determine (sic), notwithstanding the abundance of evidence before it, whether it has jurisdiction to entertain the action.

It was further submitted on behalf of the appellant that the action as constituted by the 1st Respondent before the trial court was an abuse of the process of the court in view of the following facts, namely '

'(1) The existence of suit No. K/3 78/82 filed by the Respondent against the appellant seeking the same reliefs as the one in the present case on appeal. The said case was struck out by the State High Court for want of jurisdiction.

(2) That no appeal was filed against the Order striking out suit No. K/3 78/82 aforesaid and therefore the order is still binding.

(3) That the suit now on appeal was filed when another suit No. K/]\\4/63/94 on the same property was pending before the same court.'

I note that the learned counsel for the 1st Respondent had submitted before the court below, that filing of the suit leading to this appeal, was an improper use of process and procedure of the court by the Appellant and cited and relied on the case of Okafor & ors. v. Attorney General & ors. (1991) 7 SCNJ. 345. He therefore, urged the court below to hold that there was an abuse of the process of the court by reason of the said filing.

The court below then stated that the case of the Appellant before the trial court was that he was the owner of the property in dispute which he said he purchased between 1969-1970 and thereafter, constructed a story building thereon. That the Appellant further stated that in 1977, the property was forfeited by the Kano State Government and was vested in him the Appellant Exhibit V was referred to. That the Appellant was dissatisfied with the said forfeiture - Exhibit V and therefore, petitioned to the Kano State Government vide Exhibits F, Fl and F2 for his property to be returned to him.

That the Appellant further testified at the trial court, that when the 1st Respondent still remained adamant and refused to return the property to him, his Solicitors filed an action - Suit No. K7378/82 against the 1st Respondent in respect of the forfeiture of the property in dispute. That the said court, struck out the suit for lack of jurisdiction and that he did nothing afterwards until 1994, when he again, filed the suit which is the subject-matter of the instant appeal.

The court below at page 445, inter alia, stated as follows;

\"The issue that calls for determination is whether the filing of this suit as opposed to appealing against the order striking out the suit for lack of jurisdiction, was an abuse of the process of the court. Abuse of process of the court is defined as the improper use of the process and procedure of the court by a litigant\". See Robert C. Okafor & ors. v. Attorney General & ors. (1991) 7 SCNJ. 345\".

It then at page 446 thereof, reviewed and evaluated the evidence and the undisputed facts and stated inter alia, as follows:

'..... The court has stated in an unmistakable term that it has no jurisdiction to entertain the case. The only reasonable and correct remedy left to the 1st Respondent (i.e. the Appellant) is not in re-filing the case in the same court but in appealing against the decision of the court striking out the case.'

It continued thus-

'What the 1st Respondent (meaning the Appellant) was claiming in suit No. K/3 78/82 was to re-gain his property, the property in dispute and all the rents he would have earned from the property since 1979. If all the present new suit now on appeal is meant to achieve, as shown in the amended statement of claim, is to get back the property in dispute and all the rents he would have earned, it is certainly an abuse of court process because it disregarded the clear pronouncement of the Kano State High Court, that it had no jurisdiction. See Adigun v. The Secretary, Iwo Local Government (1999) 5 SCNJ. 209 at 216. In the circumstances, I am of the view that the institution of suit No. K/291/94 in its entirety is an abuse, of process of the court.'

(the underlining mine)

I entirely agree with all these sound findings and reasoning.

Now, from the foregoing, it is plain to me that the crux of the subject-matter leading to this appeal, is that the institution of the present suit, Suit No., K/291/94, is a gross abuse of the process of the court as rightly found and held by the court below. For purposes of emphasis, I will deal briefly with what consists an abuse of the process of the court as have been firmly settled in a number of decided authorities. The concept of abuse of court or judicial process, denotes a perversion of the system by the use of a lawful procedure for the attainment of unlawful results. Abuse of judicial process manifests itself largely in the multiplicity of actions on the same subject matter between the same parties. It is not the existence of the right to institute these actions that is protested against, rather, it is the manner of exercise of this right and the purpose of doing same that is abhorred. The term is generally applied to a proceeding, which is lacking in bona fides. It has a tinge of malice. See Miss Ifeyinwa Ogoejofo v. Daniel Chiejina Ogoejofo (2002) 12 NWLR (Pt. 780) 171 at 185. See also Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156; Okorodudu v. Okoromadu (1977) 3 SC. 21.

There is abuse of process of court where the process of the court has not been used bonafide and properly. The circumstances, in which abuse of court process can arise has been said to include the following: -

'(a) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin that action.

(b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.

(c) Where two similar-processes are used in respect of the exercise of the same right for example a cross appeal and a respondent's notice.

d) Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below.

(e) Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. The abuse lies in the inconvenience and inequities involved in the aims and purposes of the action. See Jimoh v. Starco (Nig.) Ltd. (1998) 7 NWLR (Pt. 558) 523 at 535; Jadesimi v. Okotie-Eboh (1986) 1 NWLR (Pt. 16) 264'

I note that the court below dealt with the second issue formulated by the 1st Respondent - i.e. \"Whether the decision of the Kano State High Court in suit No. K/378/82 did not constitute res judicata (sic) to the present action\". It examined what the plea of res judicata is all about and reproduced at page 447 of the Record, the Appellant\'s claims both in the above suit and those filed in the present suit leading to the instant appeal as reproduced in the said lead Judgment of my learned brother, Mukhtar, J.S.C. It then dealt with the question as to when a decision is said to be final or interlocutory. It reproduced part of the pronouncement of Uwaifo, J.SC, in the case of Clement C. Ebokan v. Ekwenibe & Sons Trading Co. Ltd. (1999) 7 SCNJ. 77 at 95 and held that on this authority, the matter or subject matter, could not be further brought back to the Kano State High Court. It then stated at page 450 of the Records, inter alia, as follows:

'..... In the circumstances, I am of the view that the decision in suit No. K/378/82 is a final decision. In that regard, the conditions for the application of the doctrine of issue estopel in this case have been established.'

The following facts, as rightly submitted in the Respondent\'s Brief, shows and indeed supports, rightly and justifiably, the finding as a fact and holding by the court below that:

(i) The existence of Suit No. K/378/82 filed by the Appellant against the Respondent seeking the same reliefs as the instant one in K/291/94, which was struck out for want of jurisdiction by the Kano State High Court.

(ii) Suit No. K/291/94 which was decided by the trial court, was filed, when another Suit No. K/M63/94 in response of the same property, was pending before the same court.

(iii) There was no appeal filed by the Appellant against or challenging the said decision of the Kano State High Court in Suit No. K/3 78/82, which as I have noted in this Judgment, was, struck out for want of jurisdiction. In law and in fact, that decision striking out the said Suit is still subsisting until set aside by an appellate court and therefore, is binding on the parties.

So, if the court had no jurisdiction, there was no need for the trial court going into the merits of the case on the evidence purportedly proved by documents. On this ground alone, this appeal fails and I dismiss it.

In respect of the said Issue 2 (b) of the 1st Respondent's as to the operation of the doctrine res judicata, I will also deal with the same even briefly in order to see whether or not it applies to the instant case leading to this appeal having regard to the finding as a fact and holding of the court below that Suit No. K/378/82 constituted Res Judicata in relation to Suit No. K/291/94, which gave right to the instant, appeal i.e. that the present case that has led to this appeal, was caught by said doctrine.

It is now firmly settled in a long line of decided authorities, that 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 privy/privies, may re-litigate that issue again by bringing a fresh action. The matter is said to be res judicata. The Estoppel created, is said to be by record inter parties. See the case of Osurinde & 7 ors. v. Ajamosun & 5 ors. (1992) 6 NWLR (Pt.246) 156 at 183-18; (1992) 7 SCNJ. (Pt.l) 79 at 106. In other words, the rule of estoppel per rem judicatam, requires that where a final decision is given by a court of competent jurisdiction, the parties thereto, cannot be heard to contradict that decision in any subsequent litigation between them respecting the same subject-matter. As a plea, the decision operates as a bar to a subsequent litigation and as evidence, it is conclusive between the parties to it, See Sections 57 and 55 of the Evidence Act See the case of Alhaji Oloriegbe v. Omotosho (1993) 1 SCNJ. 30. It need be stressed that even a person who has acted to preclude himself from challenging the judgment in which case, he is estopped by his conduct. The plea is based on the principle of public policy that since the adverse party has no cause of action against him (especially where a court has given a final decision on the matter like deciding that it has no jurisdiction to entertain a matter and there is no appeal against that decision), the court lacks the jurisdiction. The principle is usually referred to as estoppel by record as I have earlier stated. See the case of Chief Ajakaiye & anor. v. The Military Governor of Bendel State & ors. (1993) 9 SCNJ. (Pt.II) 242 at T248-249. here are two (2) kinds of Estoppel as discussed in the case of Ogbogu & 7 ors. v. Ndiribe & 5 ors. (1992) 6 SCNJ. (Pt II) 301 at 317, 324, but it is not necessary for me, to go into them in this Judgment. See also the classic judgment on the doctrine/plea and also defining estoppel per rem judicatam in the case of Ben Ikpang & ors. v. Chief Sam Edoho & anor. (1978) 6-7 S.C. 211 at 257; (1978) LRN at 36 -per Aniagolu, J.S.C.

citing the case of Mills v. Cooper (1967) 2 All E.R. 100 at 104 - per Diplock, L.J

In the case of Ibero & anor.v. Ume-Ohara (1993) 2 SCNJ. 156 at 164 & 171, - per Nnaemeka-Agu, J.S.C, it was held that once it is found that the question in litigation, is caught by estoppel per rem judicatam, there the matter lies. It is a rule of public policy based on the maxim; \"interest republicae ut sit finis litiuim\", - it is in the public interest, that a litigation, shall come to an end or there must in the public interest, be an end to litigation. See Egbevemi v. Ogundiran & anor. v. Esunyeini Balogun (1952) WRNLR 51 at 52 and Aro v. Fagbohunde (1983) 2 S.C. 75 at 83. So conclusive and important is estoppel per rem judicatam, that the party affected by it, is npt allowed to plead against, it or to call evidence\' to contradict it. He can only show that the\"\" decision, was not validly or competently reached, or that the court or tribunal whose decision is relied upon-as res judicata, had no jurisdiction or that the parties, subject-matter or issue, were not the same.

Now, it is important to note that the ingredients of the plea are stated by this Court in the case of Idowu Alase & ors. v. Sanyo. Olori Ilu (1965) NMLR 66 and Fadiora v. Gbadebo (1978) 3 S.C. 219. Before the doctrine or plea can operate or be sustained, it must be shown that the parties, issues and subject matter, were the same in the previous action as those in the action in which the plea is raised. This is why the defence of res judicata, cannot succeed, unless these three ingredients are present or proved or established. See Gilbert Echebiri v. John Anozie (1972) 2 ECSLR 665 at 668; Chief Urum & anor. v. Chief Osbu & ors. (1972) 2 ECSLR 760 (a), 763; Chikwendu v. Mbamali & anor. (1980) 3-4 S.C. 31 at 48; Ihenacho Nwaneri & ors.v. Nnadikwe Oriuwa & ors. (1959) 4 FSC. 532; Falaye & 2 ors. v. Alhaji Otapo & 2 ors.(1995)2 SCNJ. 195 at 220-221 - per Iguh, J.S.C.

Once these three ingredients are conclusively established (as is clear in this case leading to this appeal), the court, cannot regard such previous judgment, as mere evidence. It is said to be conclusive and estops the contrary to the decision in the previous suit. See the case of Ekennia v. Nkpakara & 7 ors. (1997) 5 SCNJ 70 at 83. The doctrine or plea is said to be an application of the rule of public policy that no man shall be vexed twice for one and the same cause on the same issue. See the cases of Chief Adomba & 3 ors. v. Odiase & 3 ors. (1990) 1 NWLR (Pt.125) 165 at 178; (1990) 1 SCNJ. 135 and Ebba & 3 ors. v. Chief Osodo & 2 ors. (2000) 6 SCNJ. 100 at 117, 121 - per Ogundare, JSC, (of blessed memory).

I have noted earlier in this Judgment, that the Appellant did not appeal against the decision in Suit No. K/3 78/82. It is settled that a party is estopped by his failure to appeal against an adverse finding of a fact relevant to the issue. See Sections 150 and 151 of the Evidence Act and the case of Joe Iga & ors. v. Chief EzekielAmakiri & ors. (1976) 11 S.C. at 12-13.

I repeat and this is settled, once a matter or issue, is finally settled in a previous suit by a court of competent jurisdiction (as in the instant case), such a matter or issue so settled, can never again, on the principle of res judicata or issue estoppel, be raised or re-litigated in subsequent proceedings by those who were parties or privies to the previous proceedings. In the instant case, the parties, (i.e. the Appellant and the 1st Respondent), the issues and the subject matter, are the same in both Suits No. K/378/82 and No. K/291/94. As I have found-as a fact and held earlier in this Judgment, the bringing or instituting the later case/suit, was certainly, an abuse of the process of the court. The declaration of ownership is in respect of the property situate at 59 Lamido Road, Kano. The parties are the same. The 1st Respondent was formerly known as Kano State Oil and Allied Products Ltd. The same court determined both suits. An Abuse of process of the court is only possible, by improper use of the judicial process or process already issued to the irritation and annoyance of the opponent. See the case of Okafor & 5 ors. v. The Attorney-General & Commissioner of Justice, Anambra State (1991) 7 SCNJ. (Pt.II) 345; (1991) 6 NWLR (Pt.200) 659; (1991) 6-9 NRAC. 108 at125.

I note that the Appellant, did not or never filed a Reply in respect of the plea of res judicata in paragraphs 16 and 17 of the 1st Respondent\'s Statement amounts to a denial of the said previous suits so pleaded. It is settled that there is an implied joinder of issues on that defence which means that the material allegations of fact in the said defence, are deemed to be denied. See the English case of Hall v. Eve (1876) Ch. D. 341 and our local case of Dabup v. Kolo (1993) 9 NWLR (Pt.317) 254. The court below, having found as a fact that the two suits exist, by the denial of their existence by the Appellant, his Issue No. 5 becomes most ridiculous to me. In my respectful view, and therefore, the Appellant has no answer to Issue 2 of the 1st Respondent. On this around alone, I dismiss this appeal as unmeritorious.

Now, the court below, at page 451, stated inter alia, as follows:

'Finally, The High Court of Kano State had jurisdiction to determine whether or not its jurisdiction was ousted by the Provisions of the applicable law, relevant to the forfeiture of the property in dispute, namely, the Investigation of Assets (Public Officers and Other Persons) Decree No. 37 of 1988, because that issue was properly joined by the parties, and a decision was also made on it, by that court in the previous suit No. K/378/82 that issue was also crucial in the

determination of the present case, now on appeal. In that regard, it is my view that the decision in Suit No. K/378/82 that the court lacked jurisdiction to entertain the action Constitutes res judicata to the present case; accordingly, the learned trial court in the present case on, appeal had no jurisdiction to entertain the suit and was wrong to have heard and determined the suit as he did. When the previous suit No. K/378/82 was struck out for lack of jurisdiction, the only remedy left to the lsl respondent (meaning the Appellant) was to appeal against the order striking out the case and not to open it again by way of a fresh action. See Alhaji M.U. Gombe v. P.W. (Nigeria) Ltd. & others (1995) SCNJ. 19 at, 22; Tunde Ositnrinde & ors. v. Mutairu Togun Ajamogun & ors. (1992) 7 SCNJ 79; Cardoso v. Daniel (1986) 2 NWLR (Pt. 20) at page 1; Odjevwedje v. Echanokye (1987) 1 NWLR (Pt. 52) 633. In the circumstances, it is my view and I hold that the present case on appeal is caught squarely by the doctrine of res judicata.\"

(the underlining mine except those relating to the authorities cited or referred to)

I entirely and completely agree. This is also because, if the learned trial dispassionately and the existing law, he should have found that the fresh Suit No. K/291/94 leading to the instant appeal, was an abuse of the process of the court. Significantly and remarkably, at paragraphs 3.10 and 3.11 of the Appellant\'s Brief at page 13, the Appellant in part also stated the above findings and holdings of the court below. This should have been the end of this appeal. On the ground of res judicata, the appeal fails and I dismiss it.

However, for clarify and again for purposes of emphasis, let me go a bit further. Another determining factor in this case on appeal, is Exhibit V. i.e. the Kano State Legal Notice of 1977, which came into force from 3rd June 1977. Exhibits C,D,F, Fl and F2 are letters which in response to the Appellant\'s petition, allegedly, returned the property to him. But the Supreme Military Council, failed to repeal Exhibit V, which in my respectful view, remained extant. I note that Salami, J.C.A, at page 456 in his concurring Judgment, stated inter alia, as follows;

\"... But the government failed to consider the repeal of the legal notice confiscating the property, which remained extant. The letters admitted as exhibits C, D, F, Fl and F2 are no more than gimmicks or futile and deceitful exercise. The first respondent (meaning the Appellant) and the State Government were engaged in deceipt because the same government was encouraging or goading on the appellant, (i.e. the Respondent'.'

[the underlining mine]

I agree. This is borne out by the said documents referred to. The learned trial Judge, relying on the said Exhibits C to F2, awarded the property to the Appellant.

Salami, J.C.A, at page .457 of the Records, stated rightly in my view, thus:

'..... These letters were, mere expression of intent, which were not manifested by giving it statutory teethe (sic). A letter cannot repeal nor amend an enactment even though it is a subsidiary legislation such as Exhibits V. The implication of the decision of the learned trial judge is to declare the legal notice invalid on the strength of a common letter! May God save us from the days when statutory provisions would be amended by merely exchanging correspondence \"(sic).

I will add that by virtue of Section 18(1) of the Interpretation Act, a subsidiary legislation has the force of law.

His Lordship, continued inter alia, as follows:

'But can the learned trial Judge, Wada Dinar Rano, J, legally do what he purported to have done' I do not think so.'

Now, Section 6 (6) (a) and (b) of the 1979 Constitution, defines or declares the extent of judicial powers. Surely, the order contained, in Exhibit V, qualifies as an existing law by virtue of Section 274 (4) (b) 01 Constitution and it is therefore entitled to the protection afforded such law Section 6 (6) (d) of the said 1979 Constitution. Therefore, the learned trial Judge could not and cannot, ignore or discountenance the said order. His action, with respect, had in effect nullified an enactment, which is protected in the said Constitution. Let me pause here to refer to The Public Officers and other Persons (Forfeiture of Assets) Order No. 7 of 1977 which requires the authority responsible for the registration of land in the State within fourteen (14) days from the date of the Order, to register in favour of the person to whom it is forfeited in substitution for the person originally registered. I wish therefore, to state that the failure of the officer or Authority responsible for %he registration, to so register, was a dereliction of duty. In my respectful view, it was not derogation from the Order of forfeiture. Subsection (3) is mandatory. I find as a fact and hold, that the finding by the trial court that the effect of non 'registration of the 1st Respondent's title in substitution for the Appellant\'s title ab initio, is/was contrary to paragraph 2 (3) which is in pari materia with Section 8(4) (c) and 6 of The Investigation of Assets Public Officers and other Persons) Decree No. 37 of 1968. More so, as it did not provide, for any penalty or sanction for non-registration or that it was the duty of the 1st Respondent, to effect the said registration.

It is from the foregoing and the fuller and more detailed reasoning arid conclusions in the lead Judgment of my learned brother, Mukhtar, J.S.C, that I too, allow the appeal in part and dismiss the main appeal, which is very unmeritorious. I

too affirm the decision of the court below in respect thereof. I, with respect, grudgingly and reluctantly, also award no costs against the Appellant in favour of the 1st Respondent.

Counsel

Kayode Olatunji, Esqr
with him
F.I Osemirha, Esqr ..... For the Appellant
I.N. Ambule Esqr
with him
Rilwanu Umar Esqr ..... For the 1st Respondent
..... 2nd and 3rd Respondent not represented