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REFLECTIONS ON RES JUDICATA AS BASIS FOR UPHOLDING PREVIOUS JUDGMENT

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Abstract

The adjudicatory function of the Nigerian court system has not been well grounded in the minds of both litigants and solicitors. This is due largely to the lack of understanding of some principles of law. It is a known fact that litigation period, particularly, when it relates to land disputes may continue for the next 30 years. Of course, this does not give efficacy to the operation of the due process of law and the court system. Much of these problems stem from the fact that cases are being filed every now and then on matters that have become history. So much energy, money and time are spent on re-litigation that our judiciary and men on the bench are worse for it. How do we get a quick dispensation of justice in this era of democracy? This paper examines why the issue of Estoppel per judicata could be done Suo Motu for the benefit not only for judiciary, but also for our economy, for the litigants and solicitors, so that there is finality to litigation.

Introduction

A very crucial aspect of justice all over the world is that just decisions must determine disputes between various litigants. Of particular interest is the fact that those decisions are regarded as guidelines for similar future matters. Previous judgments in our accusatorial system of justice may be likened to a two edged sword: it serves both as precedent i.e. stare decisis and estoppel. Of these two, the one that is relevant to our discourse is estoppel per *res judicata*. It is apposite to state from the onset that there are three types of estoppel; by record, deed or by conduct. Estoppel whether by record, by deed or by conduct is not a cause of

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action. It is a rule existing only to prevent a party from raising a particular contention in an action, when to raise it would be inequitable or contrary to the policy of law. The doctrine of res judicata is founded upon the principles of *estoppel*. *Estoppel* means that a litigant in the present suit or matter is prevented from re-opening a matter that has once been decided by a court of competent jurisdiction. In most jurisdictions all over the world, it is now a judicial notoriety that the defense of estoppel whether based on admission or otherwise must be specifically pleaded[1]. The object of this paper is to examine the rational behind the doctrine of Res Judicata and its relevance to Nigerian legal system. The problem of litigation or opening a cause of action or an issue that has once been decided by a court of competent jurisdiction has been a recurring decimal in our legal system. The courts are often flooded with cases that had even been settled by the Supreme Court. The cause of this problem may be twin fold: either there is lack of understanding on the part of litigants and their solicitors on the issue canvassed for and settled by the court previously or misdirection in law by the new judge sitting on the case that had once been decided by the Supreme Court. The basic maxim of the law of evidence in all jurisdiction throughout the world is *"nemo bedet bid vexari pro una et eadem causa"* the English rendition is no man ought to be twice vexed or harassed, i.e. tried for one and the same issue on two occasions. If this is the trite law, then it is incumbent on our system of administering justice to have a clearly laid down principles upon which parties could be bound by previous judgment. S. 49 of the evidence Act[2] reinforce this maxim. It provides:

> *the existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such court ought to take cognizance of such suit or hold such trial.*

The question is: what is the relevance of the doctrine of *res judicata*? What use or benefit will a party to the present proceedings derive from a previous judgment? And how do we reconcile the claim by one of the parties to the present proceedings that a previous judgment has disposed of rights and liabilities between the present parties. These and other issues are not mere theoretical questions. They are relevant in theory as well as in practice. In an attempt to provide answers to these questions, it is helpful to analyse the doctrine and examine the way courts have

[1] See **Ebba v Ogodo** (2000) F. W. L. R. (Pt 27) 2094 at 2096 and 2097.
[2] Cap E 14 **Laws of the Federation Nigeria** (2004), as amended by Decree 61 of 1991

evolved various rules by which parties of the present proceedings are bound by previous judgment.

Meaning And Scope Of Res Judicata

The doctrine says that when a court of competent jurisdiction has finally adjudicated upon a matter, it is conclusive between the parties and the matter cannot be reopened or challenged again. It was said in *Duchess vs. Kingston's case*[3] "An Estoppel, therefore, is an admission, or something which the law treats as equivalent to an admission, of an extremely high and conclusive nature. So high and so conclusive, that the party whom it affects is not permitted to aver against it or offer evidence to controvert it". The rationale behind this principle is the desirability that litigation should put an end to matters adjudicated upon between parties, and the courts should not be flooded with frivolous matters. The basis upon which this doctrine is founded involves two situations as analysed by Elliot[4], One is that a party is for ever precluded from disputing what is necessarily decided: he is said to be *estoppel per Rem Judicatam*. The other is that a party who has recovered judgment is precluded from claiming on his original cause of action. That cause of action has disappeared being merged in the judgment transit in Rem Judicatam. Merger produces the result that successful party has his judgment, and only his judgment to rely on. Aniagolu J. S. C. in ***Aro v Fabolude*** classically restated this[5]

> *as part of the principle that society must discourage prolongation of litigation the doctrine has been developed that a party to civil proceedings is not allowed to make an assertion against the other party. Whether of facts or legal consequences of facts, the correctness of which is an essential element in his cause of action or defence, in a previous suit between the same parties or their predecessors in title, and was determined by a court of competent jurisdiction unless further material be found which was not available and could not by reasonable diligence, have been made available, in the previous proceedings.*

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[3] (1772) 2 Smith's Leading cases (12th Ed) 754 cited with approval by the then Federal Supreme Courts in **Nwaneri & ors v N. Oriuwa & ors** (1959) 4 FSC 132.
[4] Phipson and Elliot, Manual of Law of Evidence 3rd Sweet and Maxwell, (1989) P. 295
[5] 1983) SCNLR 58

Having touched on the essence of the doctrine, the issue that now calls for consideration is what are the conditions that a party must meet before he can satisfy a court on a plea of *Res Judicata*. The fundamental test for the application of this doctrine was first laid down in the ancient case of Duchess of Kingston's case 5 when De Grey J., said[6]:

> *There must be a list inter parties in which the point relied on for establishing the estoppel was not merely incidentally, or collaterally, discussed and litigated, but was fundamental to the conclusion reached by the Court. The Court must be one of competent jurisdiction that has seisin of the case for the purpose of reaching a final decision inter-parties, though it may be a private tribunal such as arbitrator whose forum is a domestic one constituted by the parties themselves.*

The rules laid down in Duchess Case have been reinforced graphically by the decision of the Supreme Court in Ajuwon v Adeoti[7] where the Court held that for defense of plea of Res Judicata to succeed:

(1) The parties in the previous action and the present action must be the same.
(2) The subject matter of litigation in the previous action must be same as the one in the present action.
(3) The claim in the previous action must be the same as the one in the present action.
(4) The judgment in the previous case must be given by a court of competent jurisdiction; and
(5) The decision must be final, in other words, it must have disposed of the rights of the parties.

The conditions will now be examined.

Previous Action Must Be Between The Same Parties

In ***Abiodun v Fasanya***[8], the Supreme Court held that for the application of estoppel per Rem. Judicatam, it is well settled that number of circumstances must co-exist, in short, there must be the identities of parties or their privies,... in the antecedent

[6] (1776) 3 East 468 quoted by Lord Selboume in RV Hutchings (1818) 6 Q BD 300.
[7] (1990) 2 NWLR Pt 132 271 at 286. See also Ex Parte Adeshina (1996) 4 NWLR (Pt 442) 254 at 256
[8] (1994) 1 FSC 61 Per Coker J. S. C. See also **Bankole v Pelu** (1991) 8 NWLR (Pt 211) 523.

case or cases and the new one. "Party does not necessarily mean the person who institutes the action. But it includes those whose interest will be affected by the court's decision. It follows from this proposition that persons who were not parties and whose interests were not affected by the previous action can never be met with the plea of *Res Judicata*. It is my submission that to allow parties to do otherwise would be manifestly absurd and unjust. For the purpose of illustration, if A and B sue in a representative capacity which involves issues C and D, and the Court decides once and for all the issues, neither A nor B nor their privies can sue on this again. In a decision of the Supreme Court[9] it was stated that there are three classes of privies, namely (a) Privies in Law, (b) Privies in blood; (c) Privies in estate. An executor is privy to his testator, an heir is privy to his ancestor and purchaser is privy to his vendor. In ***Onisango v Akinwunmi & others***[10], the court held that the plaintiff was estoppel from bringing action against the defendants because he ought to have joined them in an earlier suit. Therefore, if an interested party to proceedings folds his arm and allows others to fight his cause, he is bound by the outcome and he is estopped from re-opening the case[11]. It should be noted that privies must be those who are affected by previous judgment. This does not include principal and agent[12]. Neither does it include a litigant and a solicitor. Also the facts relied upon cannot be sustained if the earlier case was criminal prosecution and the present proceedings is civil litigation.

Subject Matter Must Be The Same

The plea of estoppel per Rem Judicata may be invoked if the subject matter of the present action will be held to be the same as that in previous action, if everything that is in controversy in the subsequent action forming the basis of the claim was also in controversy in the previous action[13]. It follows from this rule that a party cannot be estopped from bringing an action on a different matter even though parties are the same as in previous action. In ***S. D. Ojo v Jean Abadie***[14], the court made this remark: "It is hardly necessary to add that when once it is made clear that

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[9] **Shola Coker & another v Rufai Sanyaolu** (1976) 9-10 SC 223. See also **Hoare v Hoare** (1936) 3 NLR 28.

[10] (1955-56) WRNLR 39. But this does not apply where during the pendency of the action and before judgment was given the person sought to be estoppel brought his own action

[11] **Santos v Okosi** (1942) 8 WACA 29.

12**People v Evans** (1996) 2 CH 255

[13] **Oduka v Kasumu & anor** (1967) ALL NLR 293 at 301

[14] 15 WACA 54 at 55

the self same question is substantially in issue in two suits, the precise form in which either suit is brought, or the fact that the plaintiff in the one case was the defendant in the other is immaterial, the estoppel subsists between the parties". In ***Commissioner of Lands v Abraham & others***[15], the plaintiff first sued one Aromire for trespass. He later brought another action against some persons who claimed through personal capacity and the previous action was based on trespass whilst the present was on ownership, the plea of *Res Judicata* could not be sustained. It is against this background that a court will not invoke the plea of *Res Judicata* if the subject matter of the present proceedings is fundamentally different from that of the previous action[16]. As regards the application of the third condition one may quickly dispose of this limb because it is interwoven with the subject matter principle. A claim based on trespass in the previous suit cannot be litigated again in a claim based on the same trespass except it is a continuous trespass. But once a court of competent jurisdiction has determined the title of the parties to the proceedings, the same subject matter cannot come up again for adjudication.

Final Judgment Of A Court Of Competent Jurisdiction

For the plea of *Res Judicata* to be sustained, the judgment relied upon in the present proceedings must have been a final judgment made by a court competent to adjudicate on the matter. It is against this background that interlocutory order of a court will not suffice; as such judgment has no binding force. Moreover, it does not dispose of issues between parties finally[17]. But an order of dismissal operates as estoppel and ipso facto bars the losing party for all times from re-litigating the same subject matter[18]. A final judgment is one that finally determines the right of parties, and binds even though an appeal may lie, or is actually before an appellate court or there is stay of execution[19]. The mere fact that judgment is given after the issue of writ of summons in the second action when *Res Judicata* is pleaded is manifestly irrelevant. Estoppel will not operate where the court that adjudicated upon the matter lacked jurisdiction, that is, not competent to preside over the case[20]. A court may lack jurisdiction on the following premises:

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[15] (1976) 9-10 SC 203 at 224
[16] See **Ajuwon v Adeoti** (supra) **Okusanya & another v Akanwo & another** (1941) 7 WACA 1
[17] See **Hoystead v Commissioner of Taxation** (1826) AC 153
[18] See **Newton v Freeman** (1889) 15 APPCAS 1, **Owoade v Oba Lamidi**, Adeyemi III (1975) WASCA 7.
[19] See **Ejiofor v Onyelowo** (1972) 12 SC 171 at 185.
[20] **Huntly v Gaskei** (1905) 1 CH 656 at 667

It was improperly constituted; or

It was outside its jurisdiction or this may be as a result of lack of quorum or because there was objection to the jurisdiction of the tribunal because of the presence of a biased member of which objection the tribunal may disregard;
The subject matter was not one the court could adjudicate upon.
It may be interesting to note that a default judgment is indeed binding as one obtained after contest. In ***Odu v John Holt & C. Ltd***[21]., where judgment was given after hearing evidence for the defendant and that of the plaintiff in cross suits was dismissed, the Plaintiff's application to have his case re-listed failed. Later he brought this present action on the same claim. The court held that he was estopped. Similarly, a judgment signed by consent would be binding only as to that which was the subject of the consent. In practice, there has been a general misconception that one may appeal against consent judgment – especially judgment obtained through the rent tribunals. This is a wrong application of principle of law and procedural law. Once it can be adduced that there was no duress, undue influence or coercion in consenting to a judgment, then the filing of appeal is frivolous. It is a gross abuse of the process of the court. In such a situation, appeal could only lie if the terms of the consent judgment were varied or different from that consented to: On the other hand, the dismissal of an action for want of prosecution does not operate as *Res Judicata* or a bar to subsequent proceeding[22].
It should be noted that where an order of non-suit is made in a case all the findings of fact in that case are treated as not having been made, any plea of *Res Judicata* cannot arise in subsequent proceedings between the same parties on the basis of the findings in the earlier case which was non-suited[23]. The fact that a judgment was given per incuriam does not disturb it from operating as estoppel – provided an appellate Court or the Court that gave the wrong judgment has not set it aside[24].
Similarly, the mere fact that a finding of fact was made in an earlier judgment during the pendency of an action in which a plea of Res Judicata is raised will not prevent it from operating as *Res Judicata*[25].

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[21] (1950) 19 NLR 127
[22] **Customs Exercise v Kalu** (1965) 1 ANLR 397
[23] **Talabi v Abiola Adeseye** (1973) 1 NMLR **8 inch v Walcoh** (1929) A. C. 482.
24 **People v Evans** (1969) 2 CH 255

[25] **Osondu v Nduka** (1978) 1 SC 9

The Meaning Of Court Of Competent Jurisdiction

The world "Court" includes superior courts of record (i.e. Supreme Court, Appeal Court and High Courts) tribunals and arbitrators. It has been decided that if a point is raised for a decision by an arbitrator and by implication has been decided, that is final it is *Res Judicata*[26]. However, opinion is divided as to the efficacy of the decision of an arbitrator. One opinion upholds that its decision is binding and final, while the second view says it is binding in honour. Until there is legislative intervention which gives statutory backing (like the regular Courts decision) to the decision of an arbitrator, litigants (particularly successful ones) may not abide by it except a pronouncement is made upon the decision by a Court competent to adjudicate on the subject matter[27]. The decision of a Native Court will also operate as Res Judicata but with different principles underlying its application. In ***Ikang v Edoho***[28] the Court stated that in dealing with cases decided by native court the guidelines have been settled in the following principles. Firstly, in respect of the claim before those courts it is necessary to look at the substance rather than at the form of the writ

> *Kwanin **Boadu v Kobina Fosu**, 8 WACA 187; **Oluma v Tsutsu**, 10 WACA 89) one therefore should not examine those writs "microscopically" (**Udofia v Afia**, 6 WACA 216 at 218*

or with the finery of a tooth-comb; secondly, on the question of procedure adopted by those courts in arriving at their decision, subject, we must add, to the overriding principle that they must not be allowed to so fundamentally depart from accepted procedures in deciding their cases that they occasion miscarriage of justice to either party to a case, an appeal court must not be too strict in regard to matters of procedure adopted in those courts *(**Dinsy v Ossel & Anor**) (1939)* 5 WACA 177. Thirdly, generally, great latitude must be given to and a broad interpretation placed upon Native Court cases – and one may add customary court case – so that the entire proceedings, the evidence of the parties and the judgment must be examined in order to determine what the Native or Customary court case wall all about". When a party has satisfied the conditions stated above there is high probability that plea of *Res Judicata* will be sustained.

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[26] **Ajamogun v Oshunrinde** (1990) 4 NWLR (Pt 144) 407 at 410.
[27] See **Egesimba v Onusurinke** (2002) FWLR (Pt 122) 24.
[28] (1940) 6 WACA 108

Requirements For A Successful Plea Of Res Judicata

There is additional burden on a party relying on estoppel per Rem Judicatam, aside the above requirements. A party to a cause or matter who is relying on the plea of estoppel must tender the record of proceedings (i.e. certified true copy) in respect of the earlier decision he intends to rely on in a latter case. A mere assertion in an affidavit in support of an application to tender the earlier judgment will not suffice[29]. Failure to tender records of proceedings in the court below will be fatal to a party's case.

Who Should Plead Res Judicata?

Another question is who should raise the plea of *Res Judicata*. If we consider the analysis above, it is unimaginable that the plea will find its way in the statement of claim of a plaintiff. This is because once he pleads Res Judicata; it means there is nothing for the court to adjudicate upon. The plea itself decides that case. In ***Yoge v Olubode***[30] **Ibekwe J. S. C.** had this to say. "It is unreasonable for the plaintiff to embody in his own claim the plea of *Res Judicata.* In our view, such a course of action would lead to an absurdity. Indeed, it is unthinkable that the very plaintiff who invokes the jurisdiction of the court to hear his claim would be the same person to plea Res Judicata. We would liken such plaintiff to a man who, while praying fervently for long life, yet caries in his pocket, a time bomb, which, on explosion would end his life". One cannot agree less with the former Supreme court justice.

Relevance of Res Judicata

The relevance of the principle of *Res Judicata* in our legal system cannot be over emphasized. This is because as earlier pointed out the issue is still not well settled among litigants, solicitors and judges. So much energy, time money and other resources are being wasted as a result of lack of understanding and proper appreciation of the principle under consideration. It is in this connection we shall consider some cases to bring out the key points of Res Judicata. In Aro v Fabolude[31], there was a previous action in the customary court between the same parties over

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[29] **Usman v Kusfa** (1992) 8 NWLR at 249

[30] (1978) 6/7 SC 221. See also **Odi v Iyala** (2004) ALL F. W. L. R. 570 at 573 where the Supreme Court restated that this plea is available only to a defendant.

[31] (1983) 2 SC 75

the same land and the court held that the previous owner died without a son. In subsequent action between the parties, plaintiff sought to prove that the previous owner died leaving a son. It was held by the Supreme Court that he has precluded from so proving as he was caught by the rule of *estoppel*. Aniagolu JSC made this observation[32]. The basis for the plaintiff's claim was therefore thrown overboard in that judgment of 1972. The basis of his claim was that he was the son of *Aro Orija*, and *Aro Orija* was the owner of the land in dispute and that the land descended to him as direct son of the said *Aro Orija*. Since the Court held that *Aro Orija* never had a son, having died without an issue, the substratum of the plaintiff's claim had gone and any claim made by him on the basis that he was the son of *Aro Orija* must necessarily fall. The issue having been settled in 1972 in a decision of a court of competent jurisdiction, the plaintiff could not be allowed to re-open the issue". The Learned justice of the Supreme Court relied on Lord Dennings explanation in ***Fidelitas Shipping Co. Ltd v V/O Exporchled***[33] wherein it was restated that once an issue has been decided by court, it cannot be re-opened. The Law Lord asked rhetorically – "that issue having been decided by the court, can it be re-opened before the empire". Lord Denning provided the answer negatively.

> I think no..... the Law, as I understand it, is this: if one party brings an action against another for a particular cause and judgment is given upon it, there is a strict rule of law that he cannot bring another action against the same party for the same cause. *Transit in Rem Judicatam*. See ***King v Hoare***. But within one cause of action, there may be several issues raised and distinctly determined between the parties, then, as a general rule, neither party can be allowed to fight that issue all over again. The same issue cannot be raised by either of them again in the same or subsequent proceedings except in special circumstances, see ***Badar Bee v Habib Merican Noordin***, per Lord *Macnaughten*. And within one issue, there may be several points available which go to aid one party or the other in his efforts to secure a determination of the issue in his favour. The rule then is that each party must use reasonable diligence to bring forward every point which he thinks would help him. If he omits to raise any particular point, from negligence, inadvertence, or even accident (which would or might have decided the issue in his favour), he may find himself shut out from raising that point again, at any rate in any case where the self-same issue arises in the same or subsequent proceedings. But this

[32] *Ibid* at 98-99
[33] 1966 IQB 630 at 640

again is not an inflexible rule. It can be departed from in special circumstances.

It is gratifying to note that the remark made by Lord Denning above gives room for growth and development of the law in relation to *Res Judicata*. This is because Res Judicata can be made dynamic through judicial activism. Our judges, it is submitted must be proactive and forward looking in the application of the principle of Res Judicata. Current trends in legal practice show that the application or principle of law should reflect the dynamics of the society. In other words, rigidity should not have any inroad or any part to play in the application of the principle of *Res Judicata* by our Law Courts. Against this background, the relevance of this principle of law in our legal system would be strengthened and thereby giving it the necessary vitality.

Propriety of Raising The Issue of Res Judicata Suo Motu

As regard the principle governing raising an issue Suo Motu by the courts, it is trite law that a court of law is competent to raise issue Suo Motu which will affect its jurisdiction or competence of adjudicate on the matter before it[34]. It follows from this principle of law that it would not be only sheer stupidity but absurd to except a judge to preside over a case once decided by him. On this premise, it must be noted that: Once a competent court has delivered its judgment, it remains valid until set aside by a higher authority, usually an appellate court.

Secondly, once judgment has been delivered, the court becomes *functus offico*. Of course, a judge can preside over a matter he has previously adjudicated upon. If it was fraudulently obtained or there is an issue to be tried on the merit, which if not tried or heard would occasion miscarriage of justice on the part of the defendant or any of the parties to the suit. It is equally noteworthy that our courts in the interest of justice can raise issues Suo Motu. In ***Jumo v Shehu***[35], the court held that where it is necessary in the interest of justice for an appellate court to raise issue Suo Motu, the parties must be given an opportunity to make their comment on such an issue before a decision is given. As regards the issue of being heard which is borrowed from the maxim "*audi alteramp partem*" – hear the other side, the judge presiding over a matter does not need to have recourse to the parties as regards previous judgments. Since *res judicata* is estoppel by record of proceedings in previous

[34] **Sodipo v Lemminkane O. Y.** (1992) 8 NWLR (P. 258) 299
[35] (1992) 8 WNLR (P. 258) See also **Kuti v Balogun** (1978) 1 SC 53 **Olusanya v Olusanya** (1983) 1 SC NLR 134.

matter, this is sufficient to give the judge picture of what transpired when the case first came up for adjudication. At any rate, he may not have the opportunity of inviting the parties to address him on the point after the close of address. The matter of raising issues of *suo motu* came up for consideration in the case of ***Bankole v Pelu***[36] in the Supreme Court. The Supreme Court held that the court should not have considered the issue of r*es judicata Suo Motu* without inviting the parties to address it. With respect to the case under consideration, even though their interest in IK/76/68, conflicted, there was no finding/decision of the land in dispute in favour of any of them. But the court below erred in so holding in favour of the respondents. Despite this error in law, the Supreme Court upheld the decision of the trial judge as it did not turn on *res judicata* and did not rely on it. While the holding of the Supreme Court may seem to be reasonable, it is submitted that the court needs a rethink on the issue of raising the plea *suo motu*, we submit that it would not accord with common sense and reason for a judge to preside over a case he had once decided simply because parties do not plead it in their claims. Why holding back the arms of a judge? That would be likened to asking the presiding judge to sit in judgment over his own judgment. That of course is contrary to the policy of the Law.

Effects of Res Judicata

Another point to be considered is the effect of res judicata. Once res judicata is pleaded and is sustained, the jurisdiction of the court is ousted. The plea of res judicata robs the court of its jurisdiction and that explains why, in practice, the plea has always been used only as a defence. A successful plea also constitutes a bar to any fresh actions as between the parties. Therefore, Res Judicata is a shield and not a sword which should be used effectively by litigants and solicitors to decongest the courts of multiplicity of suits[37].

Conclusion

The importance of this doctrine is founded on the premise that the Court should not be polluted with cases decided on the same issues. The plea of *Res Judicata* has been sued to decongest the courts of many cases. It has helped the judiciary to

[36] (1991) 8 NWLR (Pt 211) 253

[37] See **Archbong v Ita** (2004) ALL F. W. L. R. (Part 197) 930 at 940, where the Supreme Court held that *res judicata* is to be used as a defence, a shield and not a sword.

conserve time. The plea of res judicata is not only in line with common sense and reason, but it is unconscionable for a party to be allowed to re-open a case that has been decided. This will be against the principles of equity that he who comes to equity must come with clean hands. It is suggested that despite the Supreme Court's pronouncement in ***Bankole v Pelu***[38], there is a way of getting round this rule, the legislature can come out boldly by enacting a law which gives judges the power to deal with similar issue *suo motu*. This accords with the interest of justice and fairness where there is a wrong equity is always ready to provide a remedy. But a situation where a party is allowed to use law as an escape route to fraudulent practices is an unwholesome development. The development of this doctrine lies in its constant applications in the courts. Any attempt to stunt its growth may not augur well for our legal system, which is still developing. This does not mean one is closing eyes to the fact that ours is accusatorial form of justice which prevents judges from descending into the arena. But when justice or reality of a case demands the intervention of our judiciary, it is suggested that their arms should not be folded neither should they close their eyes to give relief just because of case presented by a party is technically defective. The era of judicial activism should not be closed. It is submitted that this will only help to give the rule of law its vitality and efficacy because coming to court after the plaintiff or defendants case has been adjudicated upon would seem a constructive disobedience to whatever the court might have pronounced on the earlier matter. Against this background, the pronouncement of the Supreme Court should suffice for those involved in litigation process, when a matter is kept in litigation by constant suits in respect of the same subject matter and between the same parties and or their privies the courts process of adjudicating may thereby be abused and scandalized[39]. It is for this purpose that these must be an end to litigation. Of course this will allow sanity and peace to reign in our justice system.

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[38] *Supra*

[39] Ex Parte Adeshina (1996) 4 NWLR (Part 442) 254 at 256