

SUMMARY OF JUDGMENT

INTRODUCTION:

This appeal borders on Land law.

FACTS:

The plaintiffs' claims against the defendant are:
(i) A declaration of title to a parcel of land known as 'OKO OYINBO' near Maroko in the Lagos State; and
(ii) An injunction to restrain the defendant and all the members of his family, his agents and/or his servants from coming on the said parcel of land and molesting the plaintiff and the members of his family.
Dated the 21st day of October, 1971." Pleadings were duly ordered and a statement of claim was filed by the plaintiffs (i.e. the present respondents) in which they aver that the plaintiffs' family is of the Lagos Idejo Class and that that family have at all material times been the owners under Native Law and Custom of the piece of land known as "Okoko Oyinbo" and that they have always been in possession thereof and indeed have always let out portions of the said lands to rent paying tenants. Paragraphs 5 and 6 of the plaintiffs' statement of claim state as follows:
"5. The plaintiff avers also that the defendant and his family have been coming on to the said land to harass their tenants.
6. The plaintiff will show at the trial that the defendant and his family have no interest or title to any part of the said land."
The defendants (i.e. the present appellants) did not file a statement of defence but soon after the plaintiffs' statement of claim was filed and delivered, they filed a motion in court asking for "an order that the plaintiff's claim be dismissed or stayed indefinitely on the ground that the claim is res judicata and/or is frivolous, vexatious and an abuse of the process of the court." The application was granted and judgment was given against the plaintiff by striking out the action. Dissatisfied, the plaintiff appealed to this court.

ISSUES:

The issue for determination was as regards the application of estoppel per rem judicatam to the present case instituted by the present plaintiffs.

DECISION/HELD:

In the final analysis, the learned justice held that this appeal succeeds and it was allowed.