ESTOPPEL, A BIG HOUSE WITH MANY ROOMS: An Appraisal

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Introduction:

The ever green judicial pronouncement of Lord Denning in the case of **Mckenny v Chief Constable of West Midlands Police Force & Anor**[1] describing the word Estoppel ".....as a big house with many rooms" has continued to be relevant and elucidate reactions from judicial officers in their efforts in trying to checkmate recalcitrant litigants who are fund of re-litigating an earlier litigated or settled matters. These litigants being aware of the fact that the case has been fought for, decided in a court of law will disguise and repackage the case by changing the parties, the cause of action, issues decided, facts decided or even by giving the subject matter a different name or description. All these are mischiefs ingeniously created by would-be recalcitrant litigant to arm himself with a view to relitigating a matter that has been decided by a Court of competent jurisdiction in an earlier case. Estoppel as a legal remedial doctrine has continued to be a ready instrument to checkmate such recalcitrant litigant from reopening a matter that has been decided by a court of law. The dynamics of the principles of law enshrined in the doctrine of estoppel has continued to facilitate its expansion from the traditional rooms of estoppel to additional new ones with statutory flavour as provided under the **Evidence Act 2011**.[2]

This article is aimed at appraising the state of the law as it relates to estoppel with a view to encouraging more innovative impetus towards issues of estoppel and the principles of law enshrined therein. Its application in practice and the importance of estoppel, how we can use it to better the state of the law are issues that will arise for discussion.

Meaning of Estoppel:

The word estoppel has defied efforts to give it a precise definition. But over the years efforts have been made to attempt a definition of this important and critical term. The **Stroud's Judicial Dictionary**,[3] defines estoppel as follows:

> Estoppel, cometh of a French word ESTOUPE from whence the English word estoppel and it is called an estoppel, or Conclusion, because a man's own act or acceptance stoppeth or closes up his

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[1] (1980) 2 All ER 227.

[2] Evidence Act 2011, passed into Law by the National Assembly on 1 June 2011

[3] Stroud Judicial Dictionary 4th Ed. Vol 2 (London; sweet & Maxwell 1972) p. 943

mouth to allege or plead the truth here. Estoppel, according to Hanbury in his book[4] is described as a doctrine which prevents a person acting inconsistently with a representation which he has made to the other party in reliance on which the other party has acted to his detriment.

The New Webster's Dictionary of the English Language[5] defined estoppel this way prevented from denying or asserting something on the ground that to do so contradicts what has already been admitted or words or denied either explicitly in words or implicitly by actions.

In the new Oxford Dictionary of English,[6] the word estoppel has been defined as

> The principle which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person or by a previous pertinent Judicial determination with origin in mid 16th century from Old French estoppel-to bar, preclude, stop up, or impede

According to the authors of Blacks' Law Dictionary,[7] estoppel is generally said to be a term that defies precise definition. It connotes in common law, dispension, as a bar or impediment which precludes allegation or denial of a certain fact or state of facts in consequence of previous allegation or denial or conduct or admission or in consequence of a final adjudication of that matter in a court of law. A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true or A bar that prevent the relitigation of issues.[8]

Rationale:

The rationale for the continual relevance of the principle of estoppel in litigation is captured and encapsulated in the two latin Maxin of **Interest Raipublicae ut sit Finis Litium** meaning it is in the interest of the state that there be a limit to litigation and **Nemo Debete Bis Vixarisi constet "Curiae Quod Sit pro uma et Eadem Causa"** meaning "No one ought to be twice troubled', if it appears to the court that it is for one and the same cause. See the case of **Thoday v Thoday.**[9]

Thus, the Supreme Court in **Alapo v Agbokere & Anor**[10] held that the rationale... "The two Maxims and the principles of law enshrined therein are policy statement aimed at directing the courts to be conscious of litigants who are in the habit of re-litigating matters,

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[4]Henbury: Modem Equity 9th 66

[5]The new Webstar's Dictionary of the English Language p.323

[6]The New Oxford Dictionary of English p.

[7]Black Law Dictionary, 6th Edition p. 561

[8]Supra 8th Edition p. 589

[9](1966)p 181 (1966)2WLR 371

(2011)202 LRCN 192 @ 205 behind the doctrine of estoppel in expressed the legal maxim-Interest

[30]Reipublicae ut sit finis litium-meaning it is in the interest of the state that there must be an end to litigation.

facts, Issues, cause of action, records already decided by an earlier court of competent jurisdiction.

In his contribution relating to the rationale, Ahuchaogu J. siting in Abia State High court. Ututu Division in **Obasi 2 Ors v Okeke & Ors.**[11] stated that:

> The rationale for the principle is that it is against public policy to encourage a party to relitigate an issue or cause of action that has been decided by a court or tribunal between the same parties or their privies

In the case of **Aro v Abolude**[12] Aniagolu JSC explained the policy thrust of the doctrine when he held thus:

> construction of the documents or the weight of certain circumstances If these were permitted, litigation would have no end except legal ingenuity is exhausted

In the case of **Bamgbehni v Oriare,**[13] the Supreme Court per Mohammad JSC cited with approval the legal renditions of the Master of Rolls, Lord Denning in the case of **Mckenny v Chief Constable of West Midlands Police Force & Anor**[14] where he stated inter alia:

> from that simple origin there has been built up over the centuries in our law, a big house with many rooms. It is the house called estoppel". In Coke's time, it was a small house with only three rooms, namely estoppel by matter of record, by matter in writing, and by matter in pais". But by our time, we have so many rooms that we are apt to get confused between them estoppel per rem judicatam, issue estoppels by representation, estoppels by conduct, estoppel by acquiescence, estoppel by election or waiver, estoppel by negligence, promissory estoppel, proprietory estoppel and goodness knows what else. These several rooms have this much in common, they are under one roof:
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> Someone is stopped from saying something or other or contesting something or other. But each room is used differently from the others. If you go into one room, you will find a notice saying estoppel is only a rule of evidence". If you go into another, you will find a different notice "estoppel can give rise to a cause of action". Each room has its own separate notices. It is a mistake to suppose that what you find in one room you will also find in the others.

With the passage of the Evidence Act 2011 by the National Assembly of Nigeria, estoppel as a legal doctrine was statutorily created as one of those rooms in addition to the creation of more rooms such as estoppel of tenant and of licensee of a person in possessiont,[15] estoppel of bailee, agent and licensee[16] estoppel of person signing bill of

[11] (Unreported) judgment in Suit No HUT/6/2007 decided on 23/5/2007 by the Abia State High Court, Ututu Division @ p 8 9.

[12](2010) 178 LRCN 87@106

[13](2010) I78 LRCN 98 @106

[14]Supra

[15]Section 170 of Evidence Act 2011

[16]Section 171 of Evidence Act 2011

lading.[17]

The Different Rooms of Estoppel

1. Estoppel By Record:

Estoppel by record is also called estoppel per rem judicatam or estoppel quashi by record. There are two kinds of estoppel per rem judicatam.[18]

(i) The first kind is "cause of action estoppel" which occurs where the cause of action is merged in the judgment, that is, once it appears that the same cause of action was held to lie in a final judgment between the same parties and on the subject matter, the parties are precluded from relitigating the same cause of action **Fadiora v Gbadebo**[19]

(ii) The second kind of estoppel by record or estoppel per rem judicatam is issue estoppel which occurs where an issue has earlier on been adjudicated upon by a Court of competent jurisdiction and the same issue comes up incidentally in question in any subsequent proceedings between the same parties (or their privies).

It is based on the principle that a party is not allowed to contend the opposite of any specific point which having been once distinctly and solemnly been determined against him; It applies whether the point involved in the earlier decision is one of fact or law or one of mixed fact and law. **Fadiora v Gbadebo.**[20]

In **Ogbogu v Ndiribe**[21] the Supreme Court per the lead judgment of Ogundare JSC cited with approval the positions of the House of Lords, England in **Fidelita Shipping Co V V/O Export Chleb.**[22]

Here Denning MR. set out the law clearly when he said:

> That issue having been decided by the court can it be reopened before the umpire? I think not. It is a case of "Issue estoppel" and fact estoppel as distinct from "cause of action estoppel" and "fact estoppel "a distinction which was well explained by Lord Diplock L.J. in **Thoday V Thoday,**[23] The law as I understand it, is this.
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> If one part brings an action against another for a particular cause, and judgment is given upon it, there is a strict statement of law that he cannot bring another action against the same party for the same cause transit in rem judicatam see **King v Hoare.**[24] But within one cause of

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[17]Section 178 of Evidence Act 2011

[18]Anwoyi & ors v Shodeke & Ors (2000) FWLR 25 @ 58, Etim v Obot (Supra)

[19](1978)3 SC 219

[20]Supra

[21](1992)6 NWLR (Pt 245) 40

[22](1966)2 QB 63 @640

[23]Supra

[24](1844) 13 M&W 494 504, (1964)1 ALL ER 314,352

action there may be several issues raised which are necessary for the determination of the whole case. The rule then Is that once, an Issue has been 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 **Bader Bee v Habib Merican Noordin.**[25]

In the case of litigation the fact that a suit may Involve a number of different Issues is recognised by the rules of Supreme Court which contain provision enabling one or more questions (either of fact or law) in an action to be tried before others. Where the issue separately determined is not decisive of the suit, the judgment and the suit continues yet I take it to be too clear to need citation of authority that the parties to the suit are bound by the determination of the issue. They cannot subsequently in the same suit advance argument or adduce further evidence directed to showing the issue was wrongly determined.[26] The only remedy is by way of appeal from the interlocutory judgment and where appropriate, an application to the appellate court to adduce further evidence, but such application will only be granted if the appellate court is satisfied that the fresh evidence, sought to be adduced could not have been available at the original hearing of the issue even if the party seeking to adduce it had exercised due diligence.....[27]

The determination of the issue between the parties give rise to what I ventured to call in **Thoday v Thoday**[28] an "issue estoppel. It operates in subsequent suits between the same parties in which the same issue arises. A fortiori it operates in any subsequent proceedings in the same suit in which the issue has been determined. The principle was expressed as long as 1843 in the word of **WIGRAM V.C.**[29] in **Henderson v Henderson's** which was expressly approved by the judicial **Committee of the Privy Council in Hoystead v Commissioner of Taxation**[30] I would not seek to better them I

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[25](19O9 AC 615
[26]Supra at P.198
[27](1843) 3 Hare100@114
[28](1926) AC 155 @ 170
[29](1972)1 All NLR (Pt 2) 270@ 282
[30]Supra

believe I state the rule of the court correctly when I say that where a given matter become the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court, required the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the parties to open the same subject of litigation in respect of matter which was not brought forward, only because they have from negligence, inadvertence, or even accident, omitted part of their case. The plea of re-judicata applied except in special cases, an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might brought forward at the time.

The above case has been cited with approval by our Supreme Court in a number of cases to wit: **Lawal v Dawodu & Anor, Aro v Fabolude.**[31]

Elements of Estoppel Per Rem Judicatam:

In **Awoniyi v Shodeke,**[32] it was held that for the principle of estoppel per rem judicatam to apply in any given proceedings, all the pre conditions to a valid plea of estoppel inter partes or per rem judicatam must apply as follows:

a. the same question must be for decision in both proceedings

b The decision relied upon to support the plea of issue estoppel must be final. **Ekpe v Antai**[33]

c. The parties must be same **Coker v Sanyaolu**[34]

d The subject matter in the two proceedings must be the same **Ibiyemi v Oiasoju**[35]

In the case of **Etim v Obot,** it was held that estoppel per rem judicatam may arise in the following situations:

(a) Where an issue of fact has been judicially determined in a final manner between the parties by a court or tribunal having jurisdiction concurrent or exclusive in the matter and the same issue comes directly in question in subsequent proceedings between the same parties. This is otherwise known as cause of action estoppel.

(b) Where the first determination was by a court having exclusive jurisdiction, and the same issue comes incidentally between same parties (issue estoppel).

(c) Where an issue of fact affecting the status of a person or thing has been necessarily determined in a final manner as a substantive part of a judgment in rem of a court or atribunal having jurisdiction to determine that status in subsequent proceedings between any parties whatever the court stated in **Etim v Obot** that both issue estoppel and res-judicata came under one head as estoppel by judgment with a clear objective to prevent a cause of action and issues as

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[31]Supra

[32](1944) 10 WACA 19, Madukolu v Nkemdilim (1962)1 ALL NLR 587@ 594

[33](1976) 9-10 SC 203@ 221

[34](1957) WRNRL 25

[35]Supra

arising from the cause of action from being re-opened or relitigated in subsequent litigation by the same parties or their privies. The issue must be relevant in the subsequent proceedings. It is in this respect that judgment are conclusive as to cause of action and issues directly arising and decided in the cause of action as between the parties or their privies. A party relying on issue estoppel need not prove unlike res judicata that the res, the claim and the parties are in the previous suit as in the successor and administrator, privies in Estate such as vendor and purchasers, lessor and lessee and or privy in blood such as testator and hair, privies in law such as testator and executor or in the case of intestate succession in subsequent proceedings. One crucial feature of estoppel by judgment is that it has to be specifically pleaded otherwise, one cannot rely on it.

Ntuks v NPA,[36] **Ikotun v Oyekanmi,**[37] **Balogun v Ode**[38] **Agada v Kaduna State Development and Property Co. Ltd,**[39] **Osunrinde v Ajamogun,**[40] **Ebba v Ogodo,**[41] **Ukaegbu v Ugorji,**[42] **Chinwendu v Mbamali,**[43] **Ladimeji v Salami,**[44] **Igwego v Ezeugo,**[45] **Dokubo v Omoni,**[46] **Ito v Ekpe,**[47] **Alukija v Abdulai,**[48] **Oshodi v Ejifunmi,**[49] **Ezenwani v Onwordi.**[50]

In the **Bwacha v Ikenya & Or,**[51] Mohammed 3SC delivering the judgment of the Supreme Court stated:

> The doctrine of issue estoppel has been traced to the English case of Duchess of Kingston but its formulation has not been fixed or static. It has been expanded in several cases to meet circumstances which call for application of the policy of law that underlines the doctrine of estoppel per rem judicatam namely that there must be an end to litigation. Such extension of the doctrine is found in **Fidilitus Shipping Co Ltd V V/O Export Chleb**[52] where It was applied to issues determined at the interlocutory stage. The fact that the doctrine has been received into laws in this county by long line of authorities is not all in doubt. The court enumerate the decisions confirming the elements of estoppel are **Eba v Ogodo**[53] **Adomba v**

[36](2007)13 NWLR (Pt 1051) 312
[37] (2008) I0 NWLR(Pt 1094)600
[38](2007) 4 NWLR pt 1023)
[39](2007) ALL FWLR (pt 364) 156
[40](I992) 6 NWLR (pt 346)156
[41](2000) 10 NWLR (pt 675) 387
[42] (1991) 6NWLR pt 196)127
[43](1980) 3 SC 21
[44](1998) 5NWLR(pt548)1
[45](1992) 6 NWLR (Pt 246) 564
[46](1999) 8NWLR(Pt684)298
[47](2000) 3 NWLR (Pt650)678
[48] (1998) 6NWLR (Pt 552) 1
[49](2000) 13 NWLR (Pt 480)298) 27
[50](1986) 4 NWLR (Pt33) 27
[51]20I1) 191 LRCN 1,13
[52] (L775-I8O2) All ER Rep 625
[63](1965)2 All ER 4 @ 10

Odiese,[54] Fadiora v Gbadebo,[55] Ezewani v Onwordi,[56] Uto v Obot,[57] Ekwealor v Obasi,[58] Oyerogba v Olakpa,[59] Adebayo v Babalola,[60] Agbogu v Agbogu,[61] Salaa Yoye v Lawan Olubode & Ors,[62] Oloriegbe v Omotosho,[63] Chin wendu v Nwaniagbo,[64] Mbamali & Ors,[65] Akinfolarin v Akinola,[66] Cardoso V Daniel & Ors,[67] Akujobi v Ekenan,[68] Mohammed v Oiawunmi,[69] Sun Insurance Plc v Adegoroye,[70] Awoniyi v Shodeke,[71] Ajiboye v Ishola,[72] Ikotun v Oyekanmi.[73]

Estoppel by Deed:

The principles of law encapsulated in estoppel by deed is demonstrated in the case of **Oyerogba v Olaokpa,**[74] In that case, the minor chieftaincy of Onilado of Igbooro was in dispute. Igboora is in Ibarapadistrict of those South Western Oyo Speaking Yorubas but was under the suzerainty of Baale of Ibadan (now known as the Olubadan). Two families were disputing for chieftaincy seat. The appellants' were defendants at the trial Court while the respondent was the plaintiff and represented the Ojo and the families clamming exclusive right to the appointment of Onilado of Igboora, the 1st Appellant is the prescribed authority. The custom was that it was only two families of Oje and Ojo branches of Odulana families. Odulana was the 1st Onilado of Igbocara. Ogunrinde the 2nd Onilado who died in 1977, came from Oje branch and it was then the turn of the Ojoto present the next Onitado. The Respondent who belonged to the Ojo branch was in December 1977 appointed by his branch to succeed Ogunride and his name as forwarded to the 1st appellant for approval. The 1 appellant refused to approve the 1St respondent's appointment but rather approved that of the 2nd appellant who hailed from Ajadi family. The 2nd appellant was consequently installed the Onilado of Igboora by the 1st appellant.

Earlier in 1946, one Olaitan Akande of the Ajadi of the family acting on behalf of Ajadi family sued Ogunrinde, the then Onilado and Adeoye, the then Baale of Igboora, in suit No. 1/1/46 (exhibit 'A') claiming the right of Ajadi family to the Onilado chieftaincy.

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[54](2000) 10 NWLR (Pt 675)387
[55] (1990)1 NWLR(Pt 125)165
[56](1978) 3 SC 219
[57](1986) 4NWLR (pt 33)27
[58]Supra
[59](1990) 2 NWLR (pt 131) 231
[60](1998) 13NWLR(pt583)509
[61] (1995)7NWLRpt408)383
[62] (1995)1 NWLR (pt 372) 411
[63] (1974) 10 se 209
[64](1993) 1 SCNJ 30(1983)1 NWLR Qt 270) 386
[65] (1980)3-4 SC 31
[66](1980)34 SC 31
[67]Supra
[68](1993) 4 NWLR (Pt 287) 254
[69](2003)11 NWLR (Pt 83) 379
[70](2006) 13NWLR(Pt 996) 34
[71](1986) 2 NWLR (Pt 20)1
[72](2006) 13NWLR (Pt 998) 628 (2008) IONWLR (Pt 1094) 100
[73]Supra
[74]Supra

In that case, Ogunrinde was sued as a representative of the Ojo/Oje families while Adeoye was sued as the Baale of Igboora. The evidence is suit No. 1/1/46 was to the effect that Ajadi was never a substantive Oniladobe merely acted during the minority of the person entitled thereto. The suit was dismissed.

The ease of the respondent at the trial court leading to the present appeal was that the Onilado chieftaincy started or descended from one Odulana and that there has been only six Onilados in the history of Igboora, all descending from Odulana. That since the 2nd appellant is a descendant of Ajadi family, on whose behalf Olaitan Akande fought and lost in suit No. 1/1/46 (Exhibit 'A') the said judgment is conclusive as to the dis-entitlement of Ajadi family to the Oniado chieftaincy and it therefore operates as estoppel against the 2nd appellant.

For the 2nd appellants, it was contended that the Onilado chieftaincy originated from one Durogbade the ancestor of the 2nd appellant and that Ajadi his father, was Onilado and that suit No. 1/1/46 cannot operate as estoppel as the parties in the said suit are different from the present one.

The trial court held that suit No. 1/1/46 (Exhibit 'A') operates as estoppel against the 2nd appellant and that no member of Ajadi family was entitled to the Onilado chieftaincy. The court held further that the 1st appellant, as prescribed authority under the chiefs law, was merely to approve the appointment of those entitled under customary law to the minor chief's under him. Finally, it was held that Onilado chieftaincy originated from Odulana, the ancestor of the respondent, and not from Durogbade as claimed by the appellants. Judgment was therefore for the respondent as claimed along dissatisfied with the decision, the appellant to the Court of which upheld the decision of the trial High Court and dismissed the appeal. Appellant further appealed to the Supreme Court. It was held that:

> where a person by words or deeds or by conduct made to another a clear and unequivocal representation of a fact either with knowledge of its falsehood or with the intention that it should be acted upon, or has so conducted himself that another would, as a reasonable man in his full faculties, understand that a certain representation of fact was in tended to be acted upon, and that other person in fact acted upon that representation whereby his position was thereby altered to his detriment, an estoppel arises against that person who made the representation and he presented it to

Estoppel By Representation:

The principle of estoppel by representation is aptly demonstrated in the case of **AG v John Holt.**[75] The facts are that in 1861, the offshore of the lagoon and all land accruing to the foreshore by reclamation or sitting became vested in the crown.

Certain rights of user of the foreshore and such land accruing thereto, have became vested in the grantee of adjourning land by licence from the crown presumed from acquiescence on the part of the crown. The case was an information preferred by the Attorney General for the purpose of establishing the rights of the crown to the foreshore and land adjourning the premises of the defendant.

[75] (1910) 2 NLR 1

The prayer in this case is inter alia for a declaration that the crown is seized of, entitled to the foreshore of the lagoon around the coast of the Island of Lagos, and of the arms and creeks thereof, between high water and low water mark, as also the bed of the said lagoon and the arms and creeks thereof as far as the tide ebbs and flows, or of so much of such foreshore and premises as is appurtenant to the lands of the respective defendants and that the same have from the 6th day of August 1861 been vested and are now vested in the crown, and that the title of the crown to the said foreshore and premises may be established against the respective defendants to stop them from hindering, preventing, and molesting. His majesty in the peaceable and quiet enjoyment and possession of the said foreshore and premises.

The defendants disputed the crowns claim, and themselves claimed ownership of the offshore adjourning their lands through their predecessors in title.

Oshorn C.J said inter alia, that the reclamation was not due to natural cause, but was the consequence of efforts of the Defendants. This, and the subsequent building on it, could not have gone on without the knowledge and against the wish of the government. Therefore, the defendants' occupation did not amount to trespass, but was a form of a license. The question for determination was whether in the circumstances, such a license could not be revoked.

Osborn CJ answered this question in the negative on the ground that it was a license to enter the crown land coupled with a grant of an interest in the land, and on the strength in this understanding the Defendants' predecessors-in-title expended money in reclaiming and rebuilding. This he said raises equity in their favour and concluded as follows:

> "----it therefore, seems on the authority of **Plimmer v Mayor etc of Klellington**[76] that license of the crown is now irrevocable and being of indefinite duration is perpetual. I hold, therefore, that the respective defendants and those claiming under them have acquired so much of the land adjouring that comprised in the respective crown grants under which they claim, as consisted of offshore and bed of the laggon reclaimed by themselves or their predecessors-in-title, a perpetual right of place anshore such things thereon".

Estoppel By Conduct Or Estoppel in Pais:

In **AG Rivers state V AG Akwa Ibom state & Anor**[77] the Supreme Court per katsina-Alu CJN in his lead judgment held the doctrine of estoppel by conduct, though a common law principle has been enacted into our body of laws as section 151 of the Evidence Act:[78]

> "when one person has, by virtue of an existing court judgment deed or agreement or by virtue of an existing court judgment, deed or agreement or by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief (a thing to be true and to act upon such belief) neither her

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[76](1884) 9 App 699

[77]Supra (2011) 3 Sc 1@33-34

[78]CAP 14. Laws of Federation of Nigeria 2001 repealed by the Evidence Act 2011 which re-enacts in section 169 thereof

nor his representative in interest shall be allowed In any proceedings between himself and such person or such person's representative in interest to deny the truth of that thing".

Under the Evidence Act 2011, the provisions of Section 169 once again gave estoppel statutory backing in the following provisions.

Section 169-

> When one person has either by virtue of an existing court judgment, deed or agreement, or. by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative in interest shall be allowed, in any proceedings between himself and such person or such person representative in interest, to deny the truth of that thing.

In further adumbration of estoppel by conduct in the case of **AG Rivers State v AG Akwa Ibom State,**[79] **Katsina-Alu CJN** held:

> Also called estoppel in pais; this common law principle which as shown above, has gained statutory acceptance in Nigeria, forbids a person from leading his opponent from believing in and acting upon a state of affairs, only for the former to turn around and disclaim his act or omission. Both the common and statutory law do not permit this conduct; that is why section 151 of the Evidence Act has used the emphatic phrase "neither he nor his representative in interest shall be allowed..... This principle was explained better in **Ude v Osuji.**[80] Thus the principle of estoppel by conduct is that where one party has, by his words or conduct, made to the other a promise of assurance which was intended to effect the legal relation between them and to be acted upon accordingly, then once the other party had taken him at his word and acted on it, then the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise by him He must accept their legal relation as modified by himself even through it is not supported in point of law by any consideration, but only by his word or conduct see **Combe v Combe,**[81] **Buhari v INEC.**[82]

Estoppel By Acquiescence:

It is a rule of universal law that, if a man, either by words or by conduct has intimated that he consents to an act which has been done, and that he will offer no opposition to it, although without it could have been lawfully done without his consent, and he thereby induces others to do that from which they otherwise might have abstained, he cannot question the legality of the Act he had so sanctioned to the

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[79] Supra

[80] (2008) 12 SC (pt 1) I,(2009) All FWIR(pt459)417@517

[81] (195 1) All ER 767@770

[82] (2008)12 SC (Pt1),(2009) All FWLR (Pt 459) 419

prejudice of those who have given faith to his words or to the fair inference to be drawn from his conduct. In such case proof of positive assent or concurrence is unnecessary.

It is enough that the party had full notice of what was being done and the position of the other party is altered. The principle of law as enunciated in this rule was aptly demonstrated in the case of **Cairncross v Loriner.**[83] In that case, a dissenting congregation had existed many years in canourstio called the united original seceeders. Some of the members, as trustees and managers, in 1827 acquired a ground and built thereon a chapel & Buildings. The congregation continued to use the chapel& ground for the purpose of their form of worshiping until 1852, when a large majority of the congregation including the minister, resolved to join another descending body called The Free Church, which was considered to hold substantially same doctrine.

The union was thereafter consummated and the minister was acted a member of the Free Church, and the congregation declared to belong to that body of dissenters.
In 1856, certain persons, members of the original congregation and who forged part of the minority, instituted the present suit, declaring themselves the only surviving, and continuing trustees, and praying to have it declared that the chapel and grounds belonged to, and were held for the use of them and such others as adhered to the original doctrine; that the plaintiffs were entitled to record the buildings and hold them In trust for these purposes. The defendants pleaded that it was competent for the congregation to join the Free Church and that the plaintiffs had acquiesced in the proceedings and were now estopped from contesting.

The court of session held that the plaintiffs had not objected in due time to the proposed amalgamation with the free church, and dismissed the suit, whereupon the present appeal was brought. On appeal, the judgment of court of Session was affirmed. See also **AG v John Holt.**[84] In **Nsiegbe & Anor v Mgbemena & Anor.**[85]
'Acquiescence' means absent to an infringement of right either express or implied from conduct by which the right to an equitable relief is lost. It takes place when a person with full knowledge of his own rights and of any act which infringe them has either at the time of the infringement or after infringement, by his conduct led the person responsible for the infringement to believe that he waived or abandoned his rights.

Equitable Estoppel:

This is incorporated in section 151 of the former section 151 of the Evidence Act and was properly interpreted in the case of **Ude v Nwara & Anor**[86], where the Supreme Court forcefully stated that by operation of the rule of estoppel a man is not allowed to blow hot and cold, to affirm at one time and deny at the other or as it is said to approbate and reprobate -**Joe Iga & ors v Amakurl & Ors.**[87]

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[83](1860) 311 R 130
[84](1976) 11 SC II, (1976) II SC
[85](2007) 10 NWLR (Pt 1042) 364
[86](1952) 14WACA 163
[87](1947) KB 130

Estoppel in Criminal Cases:

It is important to note that estoppel as a principle of law is applicable in civil cases. The equivalent principle in criminal cases is autre fois acquit or autre fois convict. This is also reflected in section 36 (9) of the 1999 Constitution of the Federal Republic of Nigeria as amended which provides as follows: -

> No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients estoppel of presidential/ Governor's Pardon:

Section 175 of the 1999 constitution provides

1. The President may
   a. Grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions.
   b. Grant to any person a respite either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence.
   c. Substitute a less severe form of punishment for any punishment imposed on that person for such an offence.
   d. Or remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the state on account of such an offence.

Section 212 provided in similar vain for the Governor of a state.

The pardon, respite, substitution of a less severe form of punishment and remittance by the President or Governor is not subject to any form of review or reversal by anybody and so, it is a form of estoppel created by such pardon, respite, substitution or remittance by the appropriate authority.

> "As that offence save upon the order of a Superior Court". Also this principle of law is captured by sections 181 and 223 of the Criminal Procedure Act and Criminal Procedure Code respectively.

This was aptly demonstrated in the case of **Edu v The Police.**[88] It is worthy to note that both in law and equity, estoppel tend to portray the same thing but there are known distinctions. Commenting on this **Nweze CC**,[89] .... the Evidence Act is not the only statute that has provisions on estoppel. The rule against double jeopardy expressed in the maxims autre fois acquit and autrefois convict codified in sections 181 and 221 (1) of the Criminal Procedure Act has found expression in section 36 (9) of the 1999 constitution between the two. In equity estoppel can arise not only from a statement of existing fact but also from a representation to future intention. But in common law, only statements of existing fact can give rise to an estoppels. Estoppel in Equity may operate

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[88] (1952) 14 WACA 163

[89] Nweze CC; Contentions Issues and responses in Contemporary Evidence law in Nigeria Vol.2, Institute for Development studies, University of Nigeria, Enugu Campus

to give the representation actual substantive rights over property but it is said that estoppel at common law is a more of Evidence preventing a party from putting forward are argument or claim inconsistent with his representation. This point help to produce another type of Estoppel called

Promissory Estoppel:

This type of Estoppel was aptly demonstrated in the case of **Central London Property Trust Ltd v High trees House Ltd**[90]. In that case the plaintiffs in September 1939 leased a block of flats to the defendant at the cost of £2,500 per annum. A war broke out in January 1940 and the plaintiffs reduced the rent to £1,250 because the defendants could no longer keep up to the rent. The war ended in 1945 and due to the act there was no time for the payment of the reduced rent, the plaintiff asked the defendants to pay the full price. The master of Rolls, Lord Denning (of the blessed memory) held that the agreement of January 1940 was temporary and ceased to apply in early 1948. He was also of the opinion that if the plaintiffs had sent for the full rent between 1940 and 1945 he would be estopped by their January 1940 promise from claiming the full amount. Thus Professor Hambury has summarized these types of estoppel in equity as:

> whereby words or conduct a person makes a representation as to his future conduct, intending the representation to be relied on and to effect the legal relations between the parties and the represent alters his position in reliance on it, the representee will be unable to act in consistently with the representation if by doing so the representee will be prejudiced

Proprietary Estoppel:

This occurs where a person incurs expenditure or prejudice himself on the believe that he had or would obtain a sufficient interest in the property to justify to justify such expenditure. It would be deducted from the above that for proprietary estoppel to be raised, the following conditions must be fulfilled

A. The person must have expended money or perjured himself
B. He must have believed either that he already owned an interest in the property or that he would obtain such interest in the property or that he would obtain such interest in the future
C. The owner must have been aware that the man was incurring the expenditure without enlightening the person **Pasmsden v Dyson.**[91]

The practice of Court for about fifty Seven (57) years of the old **Evidence Act**[92] has made certain conduct to be statutorily protected thus creating more rooms or types of estoppel.

Estoppel of Tenant:

Experiences between landlords and tenants over the years have led to the creation of Estoppel of tenant, and of licences of person in possession. This is statutory provided in the **2011 Evidence Act.**[93] It provides:

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[90](1947) KB 130
[91](1866) LR HL 129
[92]Cap. EI4Laws of Federation of Nigeria 2004
[93]Section 170 of Evidence Act 2011

no tenant of immovable property or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy title to such immovable property and no person who came upon any immovable property by the license of the person in possession of it shall be permitted to deny that such person had a title to such possession if the time when such licence was given.

Estoppel of Bailee, Agent and Licencee:

This also provided in the new **Evidence Act 2011.**[94] It provides:

no bailee, agent or licencee is permitted to deny that the bailor, principal or licensor, by whom any goods were entrusted to any of them respectively was entitled to those goods at the time when they were so entrusted.

Provided that any such bailee agent or licensee may show that he was compelled to deliver up any such goods to some person who had a right to them as agents wrongfully and without notice to the bailee, agent or licensee, obtained the goods from a third person who has claimed them from such bailee, agent or licensee.

Estoppel of Person Signing Bill of Lading:

This also one of rooms of Estoppel created by the **Evidence Act 2011.**[95] It is statutory provide in section 172 of the Evidence Act 2011. It provides'

Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, is conclusive proof of that shipment a against the master or other person signing the same, notwithstanding that some goods or some part of them may not have been so shipped, unless such holder of the bill of lading had actual notice at the time of receiving the same that the goods had not been in fact laden on board.

Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused with any default on his part, and worthy by the fraud of the shipper or of the holder or some person under whom the holder holds.

Estoppel and Matters Decided in the Customary Court:

It is of common knowledge the practice of law in the customary court does not require pleading or survey plans as to know where a particular decision is attached. In the case of **Udeze v Chidebe & Ors,**[96] Nnaemeka-Agu JSC in his lead judgment had this to say:

where an issue of estoppel per rem judicatam is raised and the decision in the previous suit is clear and self sufficient, then it is usual to take up such a case, the success of the party's case usually depended entirely on the success of the plea of estoppel. But where..... the previous suit relied upon for the plea was a decision of

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[94] Section 171 of the Evidence Act 2011

[95] (1990) IT WLRI

[96] (2008) 18 NWLR

> a native tribunal in when there was no plan or pleading the court will first hear its decision on the rightness or otherwise of the plea.

When all the facts of the previous and instant suit reveal ingredients of rest judicata then effect will be given to the principle that no man shall be vexed twice in the same cause.

Where the Parties Fronting Estoppel were the Defendants

A situation may arise where a party or parties to the previous case were defendants.

The question that readily comes to mind is can they use that judgment as ESTOPPEL in the subsequent case? This was one of the issues that came up for consideration in the case of **Nwawu Ors v Okoye & 19 Ors.**[97] The Court held

> Where the parties to a case were not plaintiffs but the defendants in an earlier action constituted by the plaintiffs, the facts of the latter case will not fall within the purview of section 151 of the Evidence Act.[98] The decision in the earlier case will not therefore in the main constitute Estoppel.

This article has enunciated in the main the principles of law enunciated under the different rooms under a big house called estoppel. It is observed that from the background of the growth of the doctrine of estoppel in line with development and expansion of the law itself, a house that was having only three (3) rooms in Coke's time is now having more than twelve (12) rooms is a welcome development of the law. The rooms seen to portray new areas where recalcitrant litigants are being awaited to remind them of their past words, conducts and activities relating to the issue, fact or law they are about to raise again.

Who should raise the issues of estoppel in a case:

The law is settled that the defendant is to raise the issue of estoppel in his statement of defence or counter claim. It is only when raised in the pleadings that the defendant can on the strength of the pleading raise a motion interlocutorily for the Court to determine the case in leminine dismiss the suit if all elements of estoppel are proved. In the case of **Chief Felix Kalu Bassey v Chief Emmanuel Nwankwo Okeke** the defendants in this case raised it in their counter claim and the Court upheld it as being proper. In the case of **Ude v Osuji**[99] the Supreme Court held that the principal of estoppel can only be invoked by the defendant.

Conclusion:

From the above analysis of the doctrine of estoppel it can be seen that the article in discussing estoppel from its inception has been a dynamic principle giving opportunity for the creation of more rooms which epitomises the dynamism in the application of the principle. It is hoped that as a continuing developing concept or doctrine, the principle will create more rooms under the same roof called estoppel.

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[97] Now Section of Evidence Act 2011

[98] Supra

[99] (1998) 63 LRN 5030