A LEGAL SYNERGY BETWEEN THE FINALITY OF THE DECISION OF THE SUPREME COURT AND THE POWER OF THE STATE TO CREATE AUTONOMOUS COMMUNITIES: A CASE STUDY OF OMUO EKITI, EKITI STATE, NIGERIA

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Abstract
Conflicts are inevitable integral part of human existence. To forestall an unrestrained reign of anarchy whenever conflicts occur, dispute resolution mechanism is proactively put in place and indeed forms an essential component of human society. A number of factors usually precipitate human conflicts. In the contemporary society, the law court plays a pivotal role in settling existential conflicts. In Nigeria, the judicial powers are donated to the courts by the Nigerian Constitution and other relevant statutes. The court as judicial umpire performs two basic functions. The first one is the resolution of disputes duly submitted to it by the aggrieved parties whilst the second one which is intractably knitted to the first function deals with the sacred duty of ensuring strict conformity of all actions both private and governmental; with the established legal order in the society. Public policy dictates an end to litigation. Hence, where parties have submitted themselves to the jurisdiction of the court in relation to dispute between them and a verdict is eventually pronounced by the court, the doctrine of res judicata will operate as bar against either of the parties from subsequently re opening the same disputes with the party in another litigation. This is however without prejudice to the constitutional right of appeal as an appeal is a continuation of trial and not the initiation of a fresh suit. By the hierarchy of courts in Nigeria, the Supreme Court is the apex and this status renders its decision final on any matter litigated before it. However, notwithstanding the finality of the decision of the Supreme Court, parties may still mutually resort to administrative remedy to re- open and amicably settle dispute earlier adjudicated upon by the Supreme Court. The foregoing development as it occurred in the subsequent creation of Omuo Oke Ekiti as an autonomous community from Omuo Ekiti despite the extant Supreme Court decision that Omuo Oke is a quarter in Omuo Ekiti constitutes the thrust of this work.

Keywords: Autonomy, Finality, Self-determination, Paramount, Commission of Inquiry, Res judicata, Declaration.

Introduction

The creation of autonomous communities by the government out of the existing communities generally involve triparte interests which are the government, the requesting communities and the existing communities from which the new autonomous communities are to emerge. More often than not, the existing communities are not warmly disposed to carving out some other autonomous communities from them as such an exercise is regarded as a diminution of their area of control and influence.

A specious argument commonly canvassed by the existing community

against creation of autonomous community is that it promotes fragmentation and bastardization of the traditional institution where people without royal lineage history or background suddenly become custodian of the traditional institution under the doctrine of necessity to provide traditional leadership in the newly created community. This argument is however; not without merit as it seems to be in tandem with the position of the government as expressed in the White Paper issued pursuant to the Morgan Chieftaincy Review Commission of 1977 where the government of the then old Ondo State hinted on the imperativeness of membership of royal lineage before assuming the status of traditional rulers and paraphernalia of office thus:

> *For the avoidance of doubt Government neither creates crowns nor confers the right to wear crowns where such right do not exist. Recognition of a Chieftaincy under the relevant portion of the Chiefs Law/Edict, as the case may be, is not an automatic endorsement of or approval for the acquisition of paraphernalia which do not historically belong to Chieftaincies, crowns and other paraphernalia of office are supposed to be inherited and not created. Therefore, where such paraphernalia do not exist by right of inheritance Government has no intention of conferring that right as of now.*

If the foregoing position of the government is to be strictly adhered to as one of the criterion for creating autonomous communities, it then means that only community with history of royal lineage will be qualified to agitate for autonomous community. Undoubtedly, this development will suffocate the statutory power of the government to freely create additional communities within the State whenever the need for such exercise arises. Such a requirement will equally prejudice the legitimate right of some communities to self-determination as a people. In reality, the flexibility of customary law and customs has however proffered the opportunity to the government to circumvent this stringent requirement as government can now modify, restructure, amend existing Chieftaincy Declaration or out rightly create an entirely new traditional order as the circumstances lend themselves to doing that. After all, traditional history, like any other genre of history begins at a particular point in time in the course of human existence.

A painstaking consideration of the position of the government as exemplified in the foregoing White Paper will unveil its impracticability in a situation where a new community is created by the government. This is because whenever an autonomous community emerges, there is bound to be an establishment and approval by the government of a recognized chieftaincy that would constitute traditional institution and through which the traditional ruler for such community would be produced. It follows therefore that whenever government through the relevant Chiefs Law/ Edict recognized any chieftaincy for a new community, it has by necessary implication given endorsement of or approval to such community for the acquisition of paraphernalia of office which had hitherto not existed prior to the creation of such new community.

It is indisputable that the traditional institution is not an independent or self-sustaining body that can exist on its own without government interference and or backing. Indeed, it is the government that provides the financial and regulatory legal back bone for the existence and sustainability of the institution. It is therefore nothing but a sheer truism that government does not create crown nor confer the right to wear crowns; after all,

the right to wear crown by any traditional ruler flows from due recognition and approval by the government.**(For instance, after the affected community must have chosen the traditional ruler, he cannot begin to function in the capacity of an Oba save and except upon approval of such appointment by the government that will equally give the appointed traditional ruler staff of office and other insignia of office as a traditional ruler. The government equally reserves the right to depose any installed Oba whenever the occasion warrants such deposition.)

The fact that the government in deserving cases usually accedes to the clamour for creation of autonomous communities is itself an attestation of its relevance and nuisance value for administrative convenience. It follows therefore that any cold receptive attitude of the existing communities towards the creation of autonomous communities whenever the government so desires becomes inconsequential.

Agitation for Creation of Omuo Oke as an Autonomous Community in Omuo-Ekiti

Agitation for creation of Omuo Oke as an autonomous community in Omuo Ekiti has a chequered history. Omuo Ekiti as a town, was originally made up of several quarters and each quarter had a head chief who were responsible to the Olomuo as the paramount ruler of Omuo Ekiti. The paramountcy of Olomuo was never challenged by any of the constituting quarters from time immemorial until sometimes in 1975 when the Olomu-Oke, His Highness, V. A. Otitoju laid claim to be the paramount ruler of Omuo Oke and equally claimed that Omuo- Oke was an autonomous town from the rest of Omuo Ekiti. In order to ascertain these claims, a Commission of Inquiry under the Chairmanship of Hon. Justice E.A. Ojuolape was set up by the then Military Administrator. The terms of reference of the Commission, otherwise called Ojuolape Commission, were to determine whether or not the Olomuo-Oke has a separate paramountcy different from Olomuo and whether Omuo-Oke as constituted was a separate town from Omuo.

The Commission made series of findings after reviewing both the oral and written evidences together with other documents tendered by the parties involved[1]

The White Paper issued pursuant to the said Commission confirmed the

[1]There is overwhelming believable evidence that Omuo or Omuo Oke was a small village, like all other village including, Kota, Igbesi, Iludofin, Isaiya, Ahan, Iworo, Ilisa, Ijero, Oruju and Iloro under Omuo before or about 1930. 2. The small villages were scattered all over the place and many of them had separate or corporate existence as a town on its own. They were all loosely referred to, as occasion demanded, variously as town, village, quarter or settlement. 3. “Omuoke” as it was then spelt had a more prominent existence than others because of the following reasons: (a) it was a junction settlement, all roads from Kabba, Ikare, IKole, Iyamoye converge at Omuoke. (b) There was an important market facing the junction; (c) The Royal Niger Company had a trading station as early as 1900 at Omuoke; (d) A European died and was buried near the market; and (e) Many of all these small settlements that made up Omuo were and are still shown on even ordinance survey map of Nigeria even though the villages had re-grouped over the years. But by about 1940, the villages knew themselves as quarters in Omuo. 4. Although some documents like the Log Books of St. Silas Church, Omuo-Oke-referred to Olomuo as head Chief and Omuo-Oke as “Ilu” meaning a town, other more important records of the old British Administrators and the staff of the Royal Niger Company contained no such references. In fact, the General Information sheet for Omuo village group complied by J.H. Becley, A.D.O for Owo Division on 7-11-33 showed that Omuo was divided into three main quarters under which there were eighteen groups. 5. The petition written to the District Officer, Owo Division, Owo dated 22-2-43 by Chiefs, Elders and people from Omuo-Oke was in respect of a candidate to fill the Olomuo vacant stool. It was signed by Chiefs and people from Omuo-Oke. 6. ON the other hand, all the other quarter heads chiefs supported the candidacy of the present Olomuo of Omuo. 7. The evidence of the Olomuo-Oke is not reliable because it was concocted to back up his pretentious claim. On the other hand, the evidence of the Olomuo is impressive and is reinforced by the evidence of Chief J.F. Okoro and the Olishua of Ishua who were not only eye-witnesses but also knew the background history of the area and the issues at stake. 8. According to native law and custom, the Olomuo-Oke is not and has never been an Oba. He was a quarter head all along under Olomuo. He claim is dangerously ambitious and must not be allowed to materialize. 9. After an inspection tour of the whole of Omuo, it was found that Omuo-Oke had no separate existence and there is no natural feature

acceptance by the Government of the above recommendations of the Commission. The people of Omuo-Oke were however dissatisfied with the decision of the government, hence they challenged same in the High Court[2] seeking a number of reliefs.

At the trial of the suit, both parties presented their case and tendered several documents in support of their respective positions. According to Olomuo Oke the Western State Government in 1975 by Order published in the Gazette as Western State Legal Notice[3] he became a paramount ruler of Omuo-Oke instead of a minor that he was. The said Order which took effect from 20th March, 1975 was tendered as Exhibit A at the trial. The Olomuo-Oke also said that later in 1976, the same Western State Government also approved his appointment as the Olomuo Oke of Omuo Oke Ekiti with effect from 10th March, 1976. The approval notice was also published in the Gazette as the Western State Notice.[4]The said approval notice was tendered in the proceedings as Exhibit B.

It was however the Defendants' case Omuo Oke had no separate existence from Omuo Ekiti and that there were no natural features demarcating it as such. The defendants further contended that Omuo Oke was just by Western State Laws of Nigeria[5] titled (The Recognized Chieftaincies Revocation and Miscellaneous Provisions) Order the list of recognized chieftaincies in Ondo State listed in the schedule to the said Orders excluded the Olomuo Oke Chieftaincy as one of the recognized Chieftaincies in Ondo State.

Upon conclusion of trial, the said court in its reserved judgment held thus:

> *I prefer the evidence of records tendered by the witnesses for the defence that Omuo Oke has always been a quarter in Omuo. This has always been the view of Omuo Oke elements until the plaintiff began to nurse his ambition for paramountcy. The claim of paramountcy by the Olomuo-Oke led to the Ojuolape Commission of Inquiry and Government acceptance of the findings. I hold the same view as did Ojuolape Commission that the claim of the Olomuo-Oke as an Oba is false Omuo Oke is not a separate town from Omuo…. In view of my conclusion, I refuse to make the 1st, 2nd, 3rd and 4th declarations sought by the plaintiff. I also refuse to grant him an injunction.*

Being dissatisfied with the judgment of the trial court, the people of Omuo Oke consequently lodged an appeal against same to the Court of Appeal. The Court of Appeal in its lead judgment delivered by Uche Omo J.C.A. (as he then was) dismissed the said appeal.

The decision of the Court of Appeal was further challenged by the people of Omuo Oke vide an appeal to the Supreme Court.

In its lead judgment delivered by I. L. Kutigi J.S.C (as he then was) the Supreme Court resolved all the issues formulated in the appeal against the Appellant (i.e the people of Omuo Oke

demarcating in from the corporate existence of Omuo. 10. Contrary to the unfortunate attack launched on some government functionaries by the Counsel to the Olomuo-Oke, there is no scintilla of evidence before the Commission to confirm the allegation that the government functionaries interfere in the headship tussle in favour of the Olomuo.,

[2] Suit No AK/89/82 i.e His Highness V.A. Otitoju (Olomuo-Oke of Omuo-Oke on behalf of himself and Omuo-Oke Community) vs. Governor of Ondo State and 2 others

[3]No: 31 of 1975

[4]No: 183

[5]No. 6 Vol. 25 of 1976 contained at page 278 Cap. 20 Chiefs Law of Ondo State and W.S.L.N 23 of 1979 re-enacting W.S.L.N. No. 6 of 1976,

quarter). With specific reference to issue 5 formulated by the Appellants which bordered on the constitutional right of freedom of association as then enshrined in the Constitution,[6] the court held as follows:

> *This is the issue of whether the provision of Section 37 of the 1979 constitution applies only to individuals and not the group rights of a quarter or town. This issue arose, I think, out of misconception of a passage in the lead judgment of Uche Omo, J.C.A. wherein he said on page 324 of the judgment thus:*
> *The answers to their submission briefly are:*
> *(a) That what is primarily contemplated here is the right of an individual and not the group rights of a quarter/town;*
> *(b) That the 1976/1979 notices do not in any way interfere with the rights of the Omuo-Oke people to freedom of association. There is nothing preventing them from refusing to associate with the rest of Omuo socially, whilst the government reserves the right to treat them as part of Omuo for its own administrative purposes.*
> *It is clear at once that it is nowhere stated in the passage above that Section 37 of the Constitution applies only to individual and not the group of a quarter or town. There is nothing in the passage read as a whole which suggests that town/quarter/group rights would not be recognized if and when one is shown to exist. On the contrary, the passage recognized the right of Omuo-Oke people as a quarter or group to associate or not to associate with the rest of Omuo. Individuals in Omuo-Oke may likewise do the same. But as rightly put by the learned Justice of Appeal, it is the right of individuals that is of primary concern. It is only when individuals join together or gang up to exercise their common rights together that one talks of group or quarter rights as such. But as rightly stated above, the 1976/1979 notices do not in any way interfere with the freedom of association of Omuo-Oke people while the government reserves the right to treat them as part of Omuo for its own administrative purposes. That is how it should be. And I believe that is how it has been. This issue also fails. In conclusion, all the issues for determination having been resolved against the appellant, this appeal fails and is hereby dismissed with costs of ₦1,000.00 each to the 1st and 2nd respondents joint and to the 3rd respondent alone.*

As can be gleaned from the above that notwithstanding the position by the Supreme Court to the effect that the people of Omuo-Oke reserved the constitutional right as a quarter or group to associate or not to associate with the rest of Omuo, the court nevertheless resolved all the issues formulated in the appeal against the people of Omuo-Oke. The reason for this development is not far-fetched as there is a fundamental legal distinction between the

[6](S.37. 1979 CFRN)

quest for autonomous status as a town and exercise of right to freedom of association. Put differently, right to freedom of association does not automatically translate to right to autonomy as erroneously believed by the people of Omuo Oke who had thought that Section 37 of the 1979 Constitution ought to avail them in their request for autonomy.

The Finality of the Judgment of the Supreme Court and the Subsequent Creation of Omuo Oke Ekiti as an Autonomous Town

In the judicature hierarchy in Nigeria, the Supreme Court is the apex court and its decision is final. This position has been confirmed in a number of cases.In OLANIYI v. OLAYIOYE[7]the court held thus:

> *By the provisions of Section 235 of the Constitution, the Supreme Court, being at the zenith of judicial ladder in Nigeria, its decisions enjoys the monopoly of finality in any proceedings in the Nigeria legal system.*

It follows therefore that once a party has exercised his constitutional right of appeal to the Supreme Court and a decision is pronounced by the court, such a decision becomes final and cannot be appealed to any other court in Nigeria. The finality of the decision of the Supreme Court is in consonance with the public policy that there should be an end to litigation. In UNITED CC NIGERIA LIMITED V. ITITA[8]the court held thus:

> *There must be an end to litigation as a rule of public policy and in the interest of common good. This is covered by the latin maxim–interest reipublicaeut sit finis litium. Public policy demands that there should be an end to litigation once a court of competent jurisdiction had settled by a final decision. Not only must the court not encourage prolongation of a dispute, it must also discourage prolongation of litigations.*

In the case under reference, the people of Omuo-Oke pursued their appeal against the judgment of the High Court that refused to recognize them as autonomous community in Omuo Ekiti up to the Supreme Court. By its judgment delivered in the suit[9]the Supreme Court upheld the decision of the Court of Appeal which had earlier upheld the decision of the High Court. Following the dismissal of the appeal of the people of Omuo-Oke by the Supreme Court, it can rightly be assumed that such a decision marked the end of their efforts to secure autonomous status in Omuo-Ekiti through judicial means. Up till date, the said judgment of the Supreme Court has not been reviewed or varied by the Court.

By virtue of Section 2(1) of the Commission of Inquiry Law[10]the Governor of the State is empowered to set up Commission of Inquiry whenever he deems it desirable to inquire into the conduct of any officer in the civil service of the State, or of any chief or the management of any department of the public service, or any local institution, or into any matter in respect of which, in his opinion, an inquiry would be for the public welfare.

The creation of autonomous communities in the State is usually preceded by the setting up of Commission of Inquiry which Commission will receive

[7](2014) All FWLR (Pt. 745) pg 363 at 409 paras D-E See also ENTERPRISE BANK LTD v. AROSO (2015) All FWLR (Pt. 795) at 314.

[8](2018) All FWLR (Pt. 934) Pg. 1193 at 1209 Paras. F-H

[9]His Highness V. A. Otitoju (Olomuo Oke of Omuo Oke on behalf of himself and Omuo Oke Community) v. Governor of Ondo State and 2 others. Suit No: SC.269/1990

[10]Cap C10 , Laws of Ekiti State)

memorandum from any community that is desirous of becoming an autonomous town. Upon the defence of such memorandum by the requesting community, the Commission will make its recommendation and submit same to the Governor who will in turn present same to the Executive Council of the State for necessary consideration before approving or rejecting the recommendation as appropriate. If the recommendation of the Commission for creating an autonomous community receives the approval of the Executive Council of the State, a new community then comes into existence and this will be followed by the issuance of Government White Paper to back the creation.

It was pursuant to the above statute and procedures that the Ekiti State Government created Omuo Oke as an autonomous town in 2013.[11]The eventual creation of Omuo-Oke Ekiti as autonomous community with Olomuo Oke as the paramount ruler now raises the issue of the legal status of the Supreme Court judgment as delivered in the suit instituted by the people of Omuo-Oke. The legal concern becomes much more complex given the fact that the government was a party in the suit that culminated in the judgment of the Supreme Court thereby rendering the government to be bound by same.[12]

The question begging for answer is that if the Ekiti State government has the legal competence to create autonomous communities, can such power be circumvented by the earlier decision of the Supreme Court that Omuo-Ekiti was one town with Omuo-Oke as one the constituent quarters? Or can it be argued that the action of the Ekiti State Government to create Omuo Oke Ekiti amounts to a review of the decision of the Supreme Court in the said suit? It is hardly of any moment to stress that the Ekiti State Government or any institution in the country lacks the vires to vary, review or set aside the decision of the Supreme Court as it is only the Supreme Court that reserves the power to vary, review or overrule its own decision in deserving cases. In ITEOGU v. L.P.D.C[13] the Supreme Court per Peter Odili JSC; inter alia held thus:

> *The Supreme Court can set aside its judgment, in appropriate cases, when certain things are shown. Otherwise, its decision is final. As a matter of fact, Order 8 rule 16 of the Supreme Court Rules, 1985 and the three principles enshrined therein demonstrates, unequivocally, a clear prohibition on the interference subsequently with the operative and substantive judgment of a Supreme Court or any part thereof except under the Slip Rule. It is therefore, now firmly settled that the judgment of the Supreme Court cannot be reviewed. In other words, the Supreme Court enjoys finality of its decisions. Except for clerical mistakes or accidental slips or omissions, it seldom re-visits its decision by way of review, variation or setting aside. Once the Supreme Court has entered judgment in a case, that decision is final and will*

[11]Following the creation of Omuo Oke Ekiti as an autonomous community, the government approved Chieftaincy Declaration for Omuo Oke Ekiti pursuant to Section 4 of the Chiefs Laws Cap E 5 Law of Ekiti State, 2010 and the Customary Law regulating the selection of the Olomuo-Oke of Omuo-Oke Ekiti Chieftaincy.

[12]A.G. RIVERS STATE v. IKALAMA (2016) All FWLR (Pt. 842) pg 1721 at 1741 paras A-C. An order of court remains valid and binding until set aside by a competent court. The party affected by the judicial order does not have discretion, nor does it lie in his wisdom, to decide whether or not to submit to it. To do otherwise will be an open invitation to anarchy. Once a court gives a ruling or makes an order, it remains subsisting and binding until set aside either by the court or on appeal. So long as an order remains in force and enforceable, the law compels the parties to comply with and obey it

[13](2019) All FWLR (Pt. 984) pg. 272 at 301-305 paras. B-B

> *remain so forever. The law may in the future be amended to affect further matters on the same subject, but for cases decided, that is the end of the matter.*

With the creation of Omuo-Oke as autonomous community the status of the Supreme Court judgment earlier delivered on the quest of Omuo-Oke for autonomy remains dicey in view of the settled principle of law that the judgment of the court subsists until same is set aside or reviewed. In EDLICON (NIG) LTD V UBA PLC[14] the court held thus

> *A judgment or ruling of a court of law, no matter how incorrectly arrived at is valid, binding and subsisting until it is set aside by the same court through a judicial review or by appellate proceedings.*

It appears that the decision of the Supreme Court in the case under reference was informed by the peculiarity that interfaced in the case. The people of Omuo Oke as shown in their originating processes categorically asserted their autonomy while still being part of Omuo Ekiti as opposed to a formal agitation process for autonomy through the government. The first and second reliefs being sought by the people of Omuo Oke are confirmatory of this assertion. For ease of reference, the said reliefs are here below reproduced to wit:

(a) A declaration that Olomuo-Oke is the traditional and paramount ruler of Omuo Oke in Ondo State.
(b) A declaration that Omuo Oke is a distinct town in Ondo State.

The above two reliefs ran through the issues formulated for determination by the people of Omuo-Oke from the High Court to the Supreme Court. It is noteworthy to observe that the Governor and Attorney General of Ondo State were made co-defendants in the suit filed by the people of Omuo-Oke. The import of this is that the government was an adversary in the suit. A community cannot unilaterally pronounce itself a recognized autonomous entity save and except with the approval of the government.

The Supreme Court decision underscored the foregoing assertion in the case when it held thus:

> *...But as rightly stated above the 1976/1979 notices do not in any way interfere with the freedom of association of Omuo-Oke people <u>while the government reserves the right to treat them as part of Omuo for its own administrative purposes</u>. That is how it should be. And I believe that is how it has been.*

It is noteworthy to observe here that the Olomuo Oke and his people anchored their paramounctey and autonomous claims on the premises of the earlier recognition granted to the Olomuo Oke as a recognized chief in 1976. With the subsequent de-recognition of the Olomuo Oke as a recognized chief, the implication in law is that Olomuo Oke was no longer a recognized chief more so as the effective date for the earlier recognition granted was yet to become mature before same was cancelled. Therefore, the position being asserted by the Olomuo Oke and his people to autonomous status was patently erroneous as it lacked legal basis. The law is trite that you cannot put something on nothing and expect it to stand.

The law is settled that when a statute includes a list of specific items that is presumed to be exclusive; the statute applies only to these listed items and to no others. The only exception is where the

[14](2017) ALL FWLR (Pt 901) Pg 581 at 600-601 paras H-A; See also: PDP V OKOROCHA (2012) ALL FWLR (Pt 626) Pg 449 at 469 para B. OBINECHE V AKUSOBI (2010) ALL FWLR (Pt 533) Pg 1839.

statute starts with a phase like "at a minimum" or "including" or "such as" or ending with a general terms, then the court will be entitled to interpret such list as illustrating the types of things the statute applies to and not as exhaustive list.

The implicit import of the provisions of the Legal Notices of 1976 and 1979 is that the earlier Legal Notices admitted as Exhibits A and B which had earlier granted recognition to the Olomuo Oke as a recognized chieftaincy stand repealed and become otiose. It is equally settled principle of law that in the interpretation of the provisions of two irreconcilable statutes, the later in time prevails.[15]

The Doctrine of Res Judicata and the Creation of Omuo Oke Ekiti as an Autonomous Community

Aside from the issue of finality of the judgment of the Supreme Court above considered, another equally weighty issue of law thrown up by the eventual creation of Omuo Oke as autonomous community by the State Government is the applicability of the doctrine of res judicata. The doctrine of res judicata applies where a final judicial decision has been pronounced by a judicial tribunal or court having competent jurisdiction over the cause or matter in litigation and over the parties thereto disposes once for all of the matters decided so that they cannot afterwards be raised or re-litigation between the same parties or their privies.[16]

Res judicata, a Latinism means a matter adjudged, a thing judicially acted upon or decided, a thing or matter settled by judgment.[17]The rule is that a final judgment rendered by a court of competent jurisdiction on the merit is conclusive as to the rights of the parties and their privies and that constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action between the parties or their privies by a court or tribunal of competent jurisdiction in the matter and the same issue comes directly in question in a subsequent proceeding between the parties or their privies. In RESSEL L.Y. DAKOLO & ORS vs. GREGORY REWANE-DAKOLO[18] the Supreme Court held thus:

> *The fundamental effect of estoppel per rem judicatam or estoppel by record is that where an issue of fact has been judicially determined in a final manner between the parties or their privies by a court or tribunal having jurisdiction in the matter and the same issue comes directly in question in subsequent proceedings between the parties or their privies, the principle of res judicata effectively precludes a party to an action or his privies from disputing against the other party in a subsequent suit, matter or issue which had been adjudicated upon previously by a court of competent jurisdiction between him and his adversary involving the same*

[15]AQUA v. ONDO S.S.C (1988) 4 N.W.L.R. (Pt. 91) 622. Later laws prevail over those which preceded them. By such a process, the preceding laws are taken to have been repealed except where the Legislators expressly provide for a 'savings' clause in the later laws. However, by virtue of the Interpretation Law, the repeal of an enactment shall not affect the previous operation of the enactment or anything done or suffered under the enactment. See: OSADEBEY v. ATTORNEY-GENERAL BENDEL STATE (1991) 1 N.W.L.R (Pt. 169) 525, at pg. 580.

[16]ASU v. IKEMBA 1991 4 SCNJ 56. This is why it is established that Estoppel per rem judicatam or estoppel of record is said to arise where an issue of fact has been judicially determined in a final. The rule of res judicata is derived from the maxim of memo debet bis vexari proceaclem causa (No man should be twice troubled for the same cause).

[17]AFOLABI v. GOVERNOR OF OSUN STATE (2013) 12 NWLR (Pt. 836) 119 at 130-132

[18](2011) 50 WRN 1 See also OSURINDE AND 7ORS v. AJOMOGUN AND 5 ORS (1992) 6 NWLR (Pt. 246) 156 at 183-184, ALHAJI LADIMEJI AND ANOR v. SALAMI AND 2 ORS (1998) 5 NWLR (Pt. 548) 1 at 13.

> *issue. The attributes in short are: (a) parties or their privies must be the same with those in the previous suit (b) issues for determination must be the same (c) adjudication in the previous case must have been by a court of competent jurisdiction (d) previous decision must have finally decided the issues between the parties.*

This is why, once an issue has been raised and distinctly decided between the parties, then as a general rule, neither party can be allowed to fight the issue all over again[19] MAYA v. OSHUNTOKUN.

Given the above highlighted elements of the doctrine of res judicata, can it be said that the doctrine will fatally apply to the subsequent demand through the Commission of Inquiry by the people of Omuo-Oke for autonomy? The answer may not be in the affirmative. To begin with, the procedure for submission of Memorandum to the Commission of Inquiry for autonomy is usually by the requesting community and does not necessarily involve two parties like a suit before a regular court. In this vein therefore, the issue of parties or their privies in the previous case and the present one being the same will not arise as it takes two to tango. The other three conditions of the doctrine will only apply where there is another party and not when the party is unilateral as in the case of submitting and defending Memorandum before the Commission of Inquiry. It should be noted that cause of action estoppel requires identity not only of subject matter but also of parties and issues in the latter and earlier proceedings.[20]

As earlier indicated, the State Government was a party to the suit instituted by the people of Omuo-Oke on its autonomy quest. Thus, even though it may be legally difficult to raise the doctrine of res judicata at the Commission of Inquiry level by the people of Omuo-Ekiti who certainly would not be favourably disposed to such a request, the government that has the final say may upon the receipt of the Commission's recommendations exercise its discretion to take cognizance of the fact that the Supreme Court has made a final pronouncement on the request of Omuo Oke for autonomy and thereby decline to grant autonomy even if the Commission has recommended the grant of autonomy to Omuo-Oke. This seems to be the only way by which the doctrine of res judicata can be of moment in the circumstance.

Conclusion

A critical perusal of the judgment of the Supreme Court will reveal that the subsequent creation of Omuo-Oke as an autonomous town does not necessarily vitiate or run foul of the said judgment. This is because what the court actually resolved was that Omuo-Oke was a quarter in Omuo-Ekiti and not autonomous town as being claimed by the people of Omuo-Oke. The Supreme Court however went further to hold that the government reserved the prerogative to continue to treat and regard Omuo-Oke as part of Omuo-Ekiti for administrative purposes or convenience.

The imputed body language of the court is that treating Omuo-Oke as part of Omuo-Ekiti for administrative purposes or convenience is at the discretion of the government. The logical and commonsensical import of the foregoing is that the government equally reserved the right not to continue to treat Omuo Oke as part of Omuo Oke by granting it autonomy as it has been done by the government.

The foregoing position is fortified by the fact that it is only the government that can create a new autonomous town out of the existing town and not by self-declaration as was originally done by the people of Omuo-Oke in the instant case.[21]Reasoning along this submission

[19](2011) FWLR (Pt. 81) 1777

[20]IKENI vs. EFAMO (2001) 10 NWLR (Pt. 720) 1

[21]The situation in the instant case was quite similar to the occurrence orchestrated by the acclaimed winner of June

therefore it stands to observe that the subsequent creation of Omuo-Oke out of Omuo-Ekiti as an autonomous town was proper and has not done any violence to the judgment of the Supreme Court earlier delivered rather the action of the government gave effect to the said judgment in a way.

The sanctity of the judgment of the Supreme Court in the case instituted by the people of Omuo Oke still remains and is not detracted from and which in summation is that it is the government that reserves the right to determine the status of the people of Omuo-Oke in relation to Omuo Ekiti. In other words, autonomous status is not just by self-pronouncement or declaration but by government bestowal which gives it legitimacy.[22]

The manner in which the issue of autonomy to the people of Omuo-Oke was eventually handled and resolved notwithstanding the extant Supreme Court judgment constitutes an eye opener to the effect that in any suit and at whatever stage, the possibility exists that the warring parties may still come together after the delivery of court judgment and harmoniously resolve their differences and have their respective goals achieved as in the instant case. In the final analyses, the finality of the judgment of the Supreme Court in any matter may only be in respect of judicial pronouncement *simpliciter* and may ultimately not be the final resolve in such a matter but what the parties eventually and mutually decide.

12 presidential election held in Nigeria, when late Chief M.K.O. Abiola declared himself the winner of the said election notwithstanding the prior annulment of the result of the election by the Federal Military Government.

[22]It is the government that gives staff of office and instrument of appointment to the traditional ruler of such community. It is also the government that approves and registers any Chieftaincy Declaration of such community among other things.