



This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Revisiting Gbadamosi v Akinloye: Doctrinal Clarity and the Jurisprudence of Land Ownership in Nigeria

David Bassey Antia^a

^aFaculty of Law, Topfaith University, Mkpatak, Nigeria

Received 31 May 2025; Accepted 02 July 2025; Published 07 July 2025

This article revisits the Supreme Court's landmark decision in Gbadamosi v Akinloye, a pivotal authority on land ownership and rights of occupancy in Nigerian property law. The judgment reaffirmed the legal primacy of existing rights of occupancy, thereby influencing the trajectory of judicial interpretation in land disputes and property transactions. Through a doctrinal analysis, the paper interrogates the jurisprudential foundations of the decision, extracting the underlying principles that guided the Court's reasoning. In doing so, it provides a critical yet balanced assessment of the Court's role in shaping a coherent land tenure system under Nigerian law. The discussion is framed against the backdrop of recent allegations of impropriety involving members of the Supreme Court who sat on the panel, prompting a broader reflection on the intersection between judicial integrity and legal legitimacy. While the article acknowledges these controversies, it maintains a focus on the legal substance of the decision, ultimately arguing that the judgment in Gbadamosi v Akinloye is doctrinally sound, evidentially supported, and consistent with the prevailing principles of Nigerian property law. The paper contributes to the scholarly discourse on land jurisprudence, highlighting the imperative of safeguarding judicial credibility in the adjudication of property rights.

Keywords: *right of occupancy, property right, land ownership, jurisprudence, justice.*

INTRODUCTION

The Supreme Court's decision in *Gbadamosi v Akinyole*¹ represents a landmark ruling with far-reaching implications for the jurisprudence of land ownership and the right of occupancy in Nigeria. By affirming that a subsisting right of occupancy supersedes all subsequent or competing claims, the Court has entrenched a critical precedent in Nigerian property law. The legal consequence of this pronouncement is clear: any attempt by a former landowner to reassert or confer rights over land previously relinquished is rendered null and void *ab initio*. The Court's position is firmly anchored in the common law maxim *nemo dat quod non habet*—one cannot give what one does not possess. Within the context of land law, this principle reinforces the sanctity of title and the finality of valid alienation, thereby promoting legal certainty in property transactions.

Beyond its doctrinal significance, the decision in *Gbadamosi* has generated notable public and scholarly interest, particularly in light of recent allegations of judicial impropriety involving justices who participated in the ruling. These developments have brought renewed scrutiny to the case, placing it at the intersection of legal principle and judicial accountability. Despite the attention the case has garnered, scholarly engagement with the substantive legal reasoning of the Court remains relatively sparse.

This paper seeks to fill that gap through a comprehensive jurisprudential and doctrinal analysis of the decision. It aims to interrogate the Court's legal reasoning, evaluate its consistency with established precedents, and consider its broader implications for land tenure regulation in Nigeria. Moreover, it situates the case within the socio-legal context of Nigeria's persistent land disputes, highlighting how the judgment shapes and reflects evolving notions of ownership, justice, and institutional trust. The following sections set out the factual and procedural history of the case, examine relevant judicial authorities, and provide a critical assessment of the normative coherence and practical impact of the Supreme Court's ruling.

¹ *Gbadamosi v Akinyole* (2013) 15 NWLR (Pt 1378) 462

FACTS OF THE CASE

The dispute in *Gbadamosi v Akinloye* originated from a land transaction concluded in 1977, when the respondents' family conveyed approximately 254.558 hectares of land, part of their ancestral Ojomu land located in Osapa Village, within Eti-Osa Local Government Area of Lagos State, to the late Gbadamosi Bamidele Eletu, father of the appellants. The sale was formalised and registered at the Lands Registry in Lagos, thereby transferring legal interest to the purchaser. Following the death of their father, the appellants inherited the land as beneficiaries of his estate and assumed peaceful possession, which they enjoyed for several years without interference. However, in 1987, the Lagos State Government undertook a compulsory acquisition of a large expanse of land in the area, including the appellants' property at Osapa Village. This prompted the appellants to challenge the acquisition and negotiate a settlement with the government. The resulting agreement recognised the appellants' proprietary interest in the affected land, and their title to Osapa Village was effectively restored.

Simultaneously, the respondents, whose family land included the parcel earlier sold to the appellants' predecessor-in-title, also contested the government's compulsory acquisition through separate legal proceedings. They succeeded in securing a judgment declaring the acquisition null and void. This led to a separate settlement between the respondents and the government, resulting in the excision and formal release of parts of the acquired land, including the Osapa Village area.

The respondents, however, contended that the appellants could not benefit from the judgment or the excision arrangement, since they were not parties to the suit brought by the respondents. They argued that while the acquisition had been declared invalid as against them, it remained valid to the appellants, whose rights were extinguished by the earlier government action. The appellants, in turn, asserted that their land was never validly acquired in the first instance and that the excision confirmed their continuing title, having inherited the property from a rightful purchaser.

The trial court found in favour of the respondents, holding that the appellants lacked a valid claim to the land and restraining them from further acts of trespass. Damages were also awarded. This decision was subsequently affirmed by the Court of Appeal. Dissatisfied, the

appellants appealed to the Supreme Court, which was called upon to resolve the central issue of whether a party who has alienated land retains any capacity to reclaim or transfer title to it after relinquishment, particularly in the context of overlapping claims arising from a revoked compulsory acquisition.

ISSUES FOR DETERMINATION IN THE APPEAL

At the Supreme Court, the appellants were represented by the distinguished Senior Advocate of Nigeria, Olu Daramola, who meticulously framed the issues arising for determination. These issues were subsequently adopted in full by the learned counsel for the respondents, Dr. Wale Olawoyin. The Supreme Court, in turn, accepted and relied upon these issues as the framework for its deliberation and adjudication. The issues, as framed, are summarised as follows:

1. Whether the Court of Appeal erred in holding that the appellants' title was extinguished solely on the basis that they failed to institute a separate action challenging the revocation of their title.
2. Whether the learned Justices of the Court of Appeal properly discharged their judicial duty when they resolved the appellants' first issue against them without adequately considering or addressing the arguments advanced in support thereof.
3. Whether the Court of Appeal was correct in its conclusion that the judgment in favour of the respondents and the subsequent settlement agreement with the Lagos State Government effectively extinguished the appellants' title in favour of the respondents.
4. Whether the appellants were precluded from deriving any benefit from the judgment obtained by the respondents in their separate suit, and whether the Court of Appeal was correct in affirming the trial court's grant of reliefs not specifically sought by the respondents.
5. Whether the Court of Appeal was justified in affirming the award of ₦500,000 in damages for trespass in the absence of concrete evidentiary support before the trial court.

These issues go to the heart of the controversy, particularly the questions of title extinguishment, the doctrine of privity in judicial relief, procedural fairness, and the evidentiary threshold for an award of damages in trespass claims. The resolution of these

questions by the Supreme Court provided significant clarification on the doctrinal and procedural contours of land rights under Nigerian law.

SUPREME COURT’S DECISION: A JURISPRUDENTIAL ANALYSIS

Upon a **prima facie** examination of the arguments advanced by counsel on both sides, the Supreme Court rightly held that it would be inaccurate to assert that the appellants were altogether precluded from benefiting from the judgment rendered in Suit No. ID/1883/89. At the time the respondents instituted that suit against the Lagos State Government, challenging the compulsory acquisition of land, legal title to the particular parcel described in Exhibit C1 (the registered Deed of Conveyance) had already been duly vested in Gbadamosi Bamidele Eletu, the appellants' late patriarch.

Significantly, the respondents’ interest in the suit was not mutually exclusive of the appellants’ claim. Rather, it encompassed it—given that the appellants’ root of title was traceable to the respondents themselves, and that the action was initiated on behalf of the entire Ojumu Chieftaincy Family. In support of this point, the court referenced *Banire v Balogun*.²

Furthermore, the Supreme Court emphasized that the declaration of the lower court ‘that the customary right of occupancy vested in the plaintiffs in and over the land mentioned in claim (i) hereof has not been validly or effectively revoked by the Military Governor of Lagos State’ had the legal effect of restoring the parties to the status quo ante the purported acquisition. Justice Aka’ahs, JSC, sharply observed the internal contradictions in the respondents' posture and lamented: The respondents have not been consistent in their claim to the land. In one breath, they claim it was the acquisition by the Lagos State Government—which was not challenged—that extinguished the appellants' right to the land; while in another breath, they assert that it was the declaration made by the court in Suit No. ID/1883/89 in their favour that extinguished the appellants’ interest.

Justice Aka’ahs, in delivering the lead judgment, further noted that the respondents had failed to disclose to the Lagos State Government that they had already divested their interest in the Osapa village land. This omission is particularly significant, considering that the land

² *Banire v Balogun* (1986) 4 NWLR (Pt. 38) 746 at 753)

originally formed part of the Ojomu Chieftaincy family estate. It was therefore a reasonable expectation that, upon nullification of the acquisition by the court, the land would revert to its rightful owners, not those who had voluntarily transferred their interest.

The duplicity in the respondents' claims was striking. On one hand, they contended that the appellants' rights were extinguished by a government acquisition they never contested. On the other hand, they claimed the same rights were invalidated by a judgment obtained in a suit in which the appellants had no participation. Such inconsistency undermined not only the credibility of the respondents' case but also its jurisprudential coherence.

At this juncture, one is reminded of the timeless dictum of Lord Hewart in *R v Sussex Justices*³, where he pronounced: Justice should not only be done, but should manifestly and undoubtedly be seen to be done.

Justice Kayode Eso, in *The Mystery Gunman*, similarly cautioned that legal practitioners and judges alike must be constantly aware that they are engaged in a real-life drama one that may alter the course of human fortune and is forever etched into the annals of history: ...as a judge or as counsel, he must know his part, but most importantly, he must know how to play it without forgetting that it is a life-drama... one which could change the course of history, the fortunes of man and one which is recorded for posterity. The whole purpose of the play in the courtroom... is the attainment of Justice.⁴

That aspiration was unmistakably achieved in the present case. The Supreme Court's verdict not only followed the law but resonated with the intuitive moral compass of a just society. It comported with logic, echoed the collective sensibilities of our society as a Nigerian people, and reflected the normative values upon which equitable societies are built.

It bears reiterating that the test for apparent bias is whether a fair-minded observer would conclude that there is a real possibility of bias.⁵⁶

Indeed, if this matter had been presented before a traditional council of village elders, the verdict would likely have aligned with that of the court guided by an unspoken but

³ Lord Hewart in *R v Sussex Justices* [1924] 1 KB 256

⁴ Kayode Eso, *The Mystery Gunman* (Ibadan, Spectrum Books 1996)

⁵ *R v Gough* [1993] AC 646 (HL)

⁶ *Metropolitan Properties Co (FGC) Ltd v Lannon* [1969] 1 QB 577

universally understood notion of fairness and equity. In his concurring judgment, Justice Onnoghen incisively deconstructed the flawed premise of the respondents' case. Having willingly transferred their title to the disputed land to the appellants, could they now seek to reclaim it from a third party, the Lagos State Government, without the consent of the appellants, whose title had been judicially vindicated?

To quote the learned Justice: The question is simply whether the respondents, who had sold their title to the portion of land in dispute to the appellants – which title was compulsorily acquired by the Lagos State Government from the appellants, and which acquisition has been declared by a court of law to be null and void – can legally repossess the title already sold to the appellants from the third party, the Lagos State Government, without the authority and/or consent of the new owner of that title? The lower courts held that the respondents are entitled to the title. However, common sense says that you cannot eat your cake and still have it back! That is the simple answer to a very simple case, as revealed by the record of appeal. Without making magic or abracadabra, can you eat your cake and still have it back?

At page 478, paragraph F-H of the judgment, the court unequivocally stated: Fortunately, this is a court of law which has absolutely nothing to do with magic or abracadabra, neither does the court allow itself to be used as an engine for the perpetration of fraud, in whatever guise.⁷

The trenchant analogy you cannot eat your cake and still have it back encapsulates the inherent absurdity in the respondents' claim. By injecting a dose of common sense into the legal reasoning, the court highlighted the practical impossibility and legal incoherence of the respondents' assertions.

Justice Aka'ahs, JSC (as he then was), also corrected the misconception, advanced by counsel for the respondents, that the appellants sat idly by and failed to challenge the government's acquisition. The court held that it was immaterial whether the appellants instituted their suit – Suit No. M/779/93 – at the same time, the respondents filed Suit No. ID/1883/89, or whether they even joined in it. Their delayed action did not prejudice their legal standing,

⁷ *Gbadamosi v Akinyole* (2013) 15 NWLR (Pt 1378) 462

nor was it for the respondents to object to its timing. That prerogative rested solely with the Lagos State Government.

Finally, the court rejected the respondents' argument that Suit No. M/779/93 (Exhibit C3), brought by the appellants, constituted a review or re-litigation of Suit No.ID/1883/89. The appellants, not being parties to the earlier suit, had the legal right to bring their independent action to challenge the acquisition of Osapa Village land they had lawfully purchased from the respondents themselves.

Before continuing with the substantive analysis of the Supreme Court's decision, it is instructive to momentarily divert attention to the submission of the respondents – namely, their invocation of the doctrine of estoppel per rem judicatam. By implication, the respondents urged the court to hold that the appellants were precluded from litigating the matter afresh, having been, in their view, bound by the judgment delivered in Suit No. ID/1883/89.

At common law and within Nigerian jurisprudence, *res judicata* (or *estoppel per rem judicatam*) denotes the principle that where a court of competent jurisdiction has adjudicated upon a matter and reached a final decision, the same issue cannot be re-litigated by the same parties or their privies. This rationale was authoritatively emphasised by Anigololu, JSC (of blessed memory) in *Aro v Fabolude*⁸, where His Lordship warned: There must be an end to litigation. Parties are not permitted to bring fresh litigations because of new views they may entertain of the law of the case... If those were permitted, litigation would have no end except when legal ingenuity is exhausted.

The Supreme Court in *Akayepe v Akayepe*⁹ laid down the essential elements of estoppel per rem judicatam as follows:

1. The parties (or their privies) in the current case are the same as those in the prior case.
2. The issues and subject matter are the same in both cases.
3. The previous adjudication was made by a court of competent jurisdiction.
4. The earlier decision was final and conclusive as to the issues in controversy.

⁸ *Aro v Fabolude* (1983) 1 SCNLR 58

⁹ *Akayepe v Akayepe* (2009) 111 NWLR (Pt. 1152) 217 at pp. 243–244, paras. E–A

These elements must cumulatively exist before the plea of estoppel per rem judicatam can be sustained.¹⁰

Notably, the burden lies squarely on the party raising the defence to establish all the requisite elements. In this case, the respondents failed to show that the appellants were privy to the litigation in Suit No ID/1883/89, or that the appellants' claim was derived through the respondents in such a way as to bind them to that judgment.

While the doctrine also encompasses **estoppel by conduct**, as explained in *Obineche v Akusobi*¹¹ and as earlier pronounced in *Oke & Anor v Atoloye & Ors*¹², such estoppel arises only where the party had knowledge of the litigation, a legal interest therein, and stood by while another litigated on their behalf. In the case under review, the respondents had divested their interest in the land at Osapa village, having sold it to the appellants. Thus, they lacked any residual legal interest in that specific parcel of land.

As affirmed in *Agbogunleri v Depo*,¹³ A privy is defined as someone whose title is derived from, and who claims through, a party to the earlier suit. The appellants in the instant case did **not** claim through the respondents' litigation in Suit No ID/1883/89, but rather asserted a separate title arising from a sale transaction.

Accordingly, the Supreme Court rightly found that the respondents' plea of estoppel failed. Not only were the appellants not parties to Suit No ID/1883/89, but the subject matter, particularly the portion already sold to the appellants, was excluded from the respondents' legitimate claim. The respondents, in negotiating a settlement with the Lagos State Government, failed to disclose that they had already alienated their interest in part of the land, including Osapa village. As such, any interest reclaimed by the respondents through that suit could not extend to the portion they had previously sold.

The court rightly condemned the respondents' conduct, describing it as unconscionable, insincere, and contrary to the principles of equity and good conscience. A party cannot compromise or negotiate over property it no longer owns. Thus, any agreement between the

¹⁰ See *Adeniran v Ashabi* (2004) 2 NWLR (Pt. 857) 375 at 405–406; *Edward v Kiri* (2006) 1 NWLR (Pt. 962) 569 at 579; *Oke v Atoloye* (1986) 1 NWLR (Pt. 15) 241 at 260; *Yoye v Olubode* (1974) 1 All NLR (Pt. 2) 118 at 122; *Fadiora v Gbadebo* (1978) 3 SC 219 at 229

¹¹ *Obineche v Akusobi* (2010) 38 WRN 117 at pp 134–135

¹² *Oke & Anor v Atoloye & Ors* (1986) NSCC vol 17 (Pt. 1) 165

¹³ *Agbogunleri v Depo* (2008) All FWLR (Pt. 408) 240

respondents and the Lagos State Government regarding excision or return of land from the acquisition vests only in those with a subsisting legal interest.

This decision is governed by the time-honoured equitable maxim: **Nemo dat quod non habet** – No one can give what they do not have. This doctrine, which lies at the heart of property law, affirms the rationale that since the respondents had divested themselves of ownership over Osapa village, they could not lawfully or equitably reclaim or renegotiate its title without the consent of the appellants, the rightful and legal owners. The Supreme Court, in aligning itself with this principle, not only upheld the integrity of legal transactions but also reinforced the court's role as a guardian against fraudulent claims cloaked in legal technicalities.

This rule is broadly applicable. For instance, in **National Provincial Bank of England v the House of Lords** held that a person who is not the owner of goods cannot pass a good title to a buyer, even if the buyer acts in good faith. Similarly, in *Savunma v Commissioner for Lands*¹⁴, the Nigerian Court of Appeal applied the principle of *nemo dat quod non habet* to hold that a grantor who had no title to land could not convey a valid title to the grantee.

The principle has certain well-established exceptions (see sections 22–25 of the Sales of Goods Act 1893) but remains a crucial litmus test in determining the validity of title derivation to land. On its application to the right of occupancy and land title, the Supreme Court explained in *Dantsoho v Mohammed*:¹⁵ Where two contesting parties trace their title in respect of the same piece of land to the same grantor, the later in time of the two parties to obtain the grant cannot maintain an action against the party who first obtained a valid grant of the land from such a common grantor because the grantor having successfully divested himself of title in respect of the piece of land in question by the first grant, would have nothing left to convey to a subsequent grantee under the principle of *nemo dat quod non habet*, as no one may convey what no longer belongs to him. The Governor in the instant case is the common grantor. The respondent's certificate of occupancy was issued on 11th August 1982. By the time the appellant's certificate of occupancy was issued on 7th October 1982 over the same plot of land, the Governor no longer had anything at Plot 79, Sharada, Kano, having not

¹⁴ *Savunma v Commissioner for Lands* [1972] 1 All NLR 146

¹⁵ *Dantsoho v Mohammed* [2003] 6 NWLR (Pt. 817) 457

revoked the earlier grant made to the respondent. The appellant got nothing from the Governor.

This dictum provides a compelling basis for applying the *nemo dat* rule in the instant case. The court further observed: It is quite ironic that the respondents, who divested themselves of their title to the Osapa village land since 1977, would submit that the Lagos State Government had no power, right or interest to transfer or alienate any portion of the land already declared by the court in suit No. ID/1883/89 as belonging to the respondents. The respondents cannot eat their cake and have it.¹⁶ The judgment in suit No. ID/1883/89 could not vest title on a party that had alienated that title. The reversion of the title must rest with the appellants.¹⁷

Moreover, the court's characterisation of the decision in ID/1883/89 as a declaratory judgment merits emphasis. By this, the court merely acknowledged the invalidity of the Lagos State Government's revocation notice, thereby affirming the appellants' title to the land. A declaratory judgment, by its nature, is determinative and conclusively establishes the rights and interests of the parties, operating *erga omnes* – against all persons.

For example, in **Attorney General of Lagos State v Attorney General of the Federation**¹⁸, the Supreme Court held that a declaratory judgment can be sought to determine the constitutionality of a statute or government action, reinforcing its finality and wide binding effect.

This understanding foregrounds a crucial question upon review of the High Court's decision, which was upheld by the Court of Appeal: did the appellants commit trespass? A thorough examination of the facts reveals that the appellants were in undisturbed possession of the land before the Lagos State Government's purported revocation of their right of occupancy – an action subsequently declared invalid by the court. Given that the appellants possessed a legitimate title to the land, it is incongruous to suggest that they trespassed upon the very land for which they held a valid right of occupancy.

¹⁶ *Coker v Sampaol* (1983) 14 NSCC 119 at 129–130; *Sanyaola v Coker* (1983) 1 SCNLR 168; *Okoli v Ojiakor* (1997) 1 NWLR (Pt. 479) 48 at 52

¹⁷ (Aka'ah JSC, p. 470, paras. F–G)

¹⁸ *Attorney General of Lagos State v Attorney General of the Federation* [2003] 12 NWLR (Pt. 833) 1

The Supreme Court's reversal of the Court of Appeal's judgment on this issue was anchored on authoritative precedent, including **Ilona v Idakwo**¹⁹, where the court held: Where there is a subsisting right of occupancy, it is good against any other right. The grant of another right of occupancy over the same piece of land will therefore be merely illusory and invalid...Where a party has fully divested himself of all interest in land, no right vests in him to deal with the same property by way of further alienation anymore. It is a matter of *nemo dat quod non habet*, i.e., he cannot give that which he no longer has.

It is settled law that a plaintiff's claim against a person in possession will fail if based on possession obtained through unlawful interference with the defendant's possession or if reliant on a certificate of occupancy procured after such interference. This principle was stated in **Dakat v Dashe**²⁰, where the Supreme Court held: The appellant failed to satisfy the trial court by credible evidence that he was in exclusive possession of the farmland. His entry into the farmland was no more than an act of trespass, which he sought to legalise by procuring the certificate of occupancy and initiating the proceedings leading to this appeal. The appellant will not secure possession by his act of trespass or by the certificate of occupancy procured after the said trespass.

CONCLUSION

Considering the plethora of authoritative dicta set out in extenso in this analysis, it is unequivocally clear that the Court's decision is firmly anchored in well-established jurisprudential principles. It is respectfully submitted that the judgment is not only defensible from a jurisprudential standpoint but also commendable from both sociological and normative perspectives. The erudite Justices exhibited an unwavering fidelity to the law, distilling its essence with crystalline clarity in their meticulous application of legal doctrines to the peculiar facts of the case. Furthermore, the authoritative imprimatur borne by their prior decisions on analogous issues lends this judgment an aura of doctrinal consistency and irreproachability.

What is more, the Court, by this judgment, reaffirmed its role as the ultimate custodian of the integrity of law. In resisting the temptation to cloak injustice with the veneer of legal

¹⁹ *Ilona v Idakwo* [2003] 11 NWLR (Pt. 830) 53

²⁰ *Dakat v Dashe* [1997] 54 LRCN 2723 at 2725)

technicality, the Court preserved not only the sanctity of precedent but also the moral authority of the judiciary. The judgment reflects a harmonious blend of law and logic, demonstrating that legal reasoning is not an abstract exercise divorced from the realities of fairness and equity. Indeed, it aligns with common sense and the intuitive understanding that one cannot convey what one no longer owns, nor can one seek to benefit from an interest already alienated.

In an era where judicial decisions are increasingly scrutinised for coherence and legitimacy, this judgment stands out as a model of legal clarity and principled adjudication. It ensures that judicial pronouncements remain credible in the eyes of the public and reinforces confidence in the administration of justice. The Court's rejection of the respondent's inconsistent and inequitable claims reaffirms the equitable maxim that one who comes to equity must do so with clean hands.

In light of the foregoing analysis, it may be safely concluded that this judgment is not only legally sound but also profoundly just. It is a decision that deserves to be celebrated – not just within academic circles but by all who believe in the rule of law, equity, and good conscience. It is a beacon of hope and a reaffirmation that, when properly applied, the law serves as a bulwark against bad faith, legal sophistry, and injustice. This is a judgment worthy of unqualified commendation and enduring scholarly recognition.