

CHIEF ORLANDO JEREMIAH AGUOCHA

V.

MRS.ALICE AGUOCHA

COURT OF APPEAL

(ABUJA DIVISION)

CA/A/1116/2018

STEPHEN JONAH ADAH, J.C.A. *(Presided and Read the Leading Judgment)*

PETER OLABISI IGE, J.C.A.

ELFRIEDA OLUWAYEMISI WILLIAMS-DAWODU, J.C.A.

WEDNESDAY, 27TH JANUARY 2021

APPEAL -Evaluation of evidence by trial court-When appellate court will not interfere therewith.

EVIDENCE- Presumptions - Where property is purchased in another person's name-Presumption raised thereby.

PRACTICE AND PROCEDURE-Appeal-Evaluation of evidence by trial court- When appellate court will not interfere therewith.

TRUSTS-Resulting trust-Where property is purchased in another person's name-Presumption raised thereby.

Issues:

1. Whether the trial court was right in its interpretation and construction of exhibits A, B, C, D, and E and

combined implication of the documents was the intention to transfer the appellant's legal interest in the property in dispute to the respondent.

2. Whether, in the circumstances of the case, the concept of resulting trust was applicable.
3. Whether the trial court failed in its primary duty of evaluating and ascribing evidential value to the evidence adduced by the parties.

Facts:

By an originating summons filed against the respondent at the High Court of the Federal Capital Territory, Abuja, the appellant sought a declaration that he reserved the right to own, acquire and maintain personally, exclusively and differently from the respondent the property known as No. 62 Harper Street, Wuse Zone 7, Abuja covered by a certificate of occupancy No: L663W-FE152-67FIR-1199A-10 dated 05/03/2008 allotted to O.J.J. Aguocha; and a declaration that the confiscation, conversion, detention of the property and the respondent's refusal to release the property and its title document were unconstitutional, unlawful, illegal and an infraction and infringement of his right to acquire and maintain immovable property in the Federal Capital Territory, Abuja.

He also prayed for an order mandating the respondent to release the certificate of occupancy of the property to him; perpetual injunction restraining the respondent and any other person acting under her instructions from further tampering with, confiscating, detaining or performing any unauthorised improvement, applications and management on the property; a declaration that the unauthorised collection of the certificate of occupancy and the subsequent utilisation of same by the respondent to make an application to the Development Control and FCDA to effect structure change and improvement to the property without his consent, knowledge and authorisation was illegal, unlawful, fraudulent and a breach of his right protected under sections 43 and 44 of the Constitution; and damages

The property in dispute is No. 62 Harper Street Wuse 7, Abuja covered by a certificate of occupancy No.L663W-FE152-67 FIR-1199A-10 dated 05/03/2008. The parties were married and the property was formerly the government house they occupied as workers in government service. It was later sold to the appellant but it was paid for by a loan procured by the respondent. The certificate of occupancy was issued to the respondent though in the appellant's name.

At the close of hearing, the trial court in its judgment held that inasmuch as the appellant was entitled to own, maintain and control immovable property under sections 43 and 44 of the Constitution and the provisions of the Matrimonial Causes Act and Rules, in the circumstances of the case, the beneficial

rights in the property in dispute vested in the respondent by reason of a resulting trust on account of the respondent having wholly paid for the property in the appellant's name and upon his mandate; and that by the operation of equity, the appellant in whose name the property was acquired did not have beneficial rights in it. Consequently, it dismissed the appellant's case.

Dissatisfied with the judgment of the trial court, the appellant appealed to the Court of Appeal.

Held (*Unanimously dismissing the appeal*):

1. *On Presumption raised where property is purchased in another person's name-*

The trust of a legal estate, whether taken in the name of the purchaser and others jointly or in the names of others without that of the purchaser, whether in one name or several, whether jointly or successive, results to the man who advances the purchase money. A person who advances money or effects payment for the trust has the trust of the legal estate. An implied trust is a trust founded upon the unexpressed but presumed intention of the settler. Generally, where on a purchase, property is conveyed in the name of someone other than the purchaser, the presumption is that the trust of the legal estate results to the person who advances the purchase money. In the instant case, the subject-matter fell within the province of the law of trust and in particular the doctrine of resulting trust. The respondent was the person who sought for loan and

Appeal No.: CA/A/1116/2018

Date of Judgment: Wednesday, 27th January 2021

Names of Counsel: Alex Akoja, Esq. (with him, K.T. Sulyman, Esq.)- for the Appellant

Samuel Ameh, Esq. (with him, Love Obasi [Mrs.])-for the Respondent

High Court:

Name of the High Court: High Court of the Federal Capital Territory, Abuja

Name of the Judge: Okeke, J.

Suit No.:CV/1100/18

Date of Judgment: Thursday, 13th September 2018

Counsel:

Alex Akoja, Esq. (*with him*, K. T. Sulyman, Esq.) - *for the Appellant*

Samuel Ameh, Esq. (*with him*, Love Obasi [Mrs.]) - *for the Respondent*

ADAH, J.C.A. (Delivering the Leading Judgment): This is an appeal against the Judgment of the High Court of the Federal Capital Territory sitting at Maitama-Abuja, delivered on the 13th September, 2018, coram: Jude O. Okeke, J.

By an originating summons filed on the 1st day of March, 2018, the claimant now appellant approached the trial court for the determination of the following questions:

- (i) Whether by the combined provisions of sections 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria as amended, the applicant (SIC) a citizen of Nigeria is not entitled to own immovable property exclusively to himself notwithstanding his marital status.
- (ii) Whether by the combined provisions of section 43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the provisions of the Matrimonial Cause Rules (SIC), the Matrimonial Cause Rules (SIC), Order 11 Rules 1 and Order XI of the Fundamental Rights Enforcement Rules 2009 (SIC), the applicant, the husband of the respondent is not entitled to own, maintain and exercise exclusive control and custody of his immovable property anywhere in Nigeria.
- (iii) Whether by the provisions of sections 43 and 44 of the Constitution of Nigeria 1999 (as amended) the respondent under the guide of marriage can withhold, confiscate, seize and or forcefully manage, control, appropriate and administer the immovable property of the applicant.
- (iv) Whether by the provisions of sections 43 and 44 of the Constitution of Nigeria 1999 (as amended), the Matrimonial Cause Act and Rules, spouses in a marriage have been dispossessed of their constitutional right to own, manage, operate and keep immovable properties individually, respectively and differently from jointly purchased properties and or “Family properties”.

Upon the determination of the above questions, the claimant/appellant prayed for the grant of the following reliefs:

- i. A declaration that the applicant reserves the right to own, acquire and maintain personally, exclusively and differently from the respondent the property known as No. 62 Harper Street, Wuse Zone 7, Abuja covered by a C of O dated 05/03/2008 No: L663W-FE152-67FIR-1199A-10 allotted to O.J.J. Aguocha.
- ii. Declaration that the confiscation, conversion, detention and refusal of the respondent to release the property and title document of the applicant known as No. 62 Harper Street, Wuse Zone 7, Abuja is unconstitutional, unlawful, Illegal and an infraction and infringement of the applicant's right to acquire and maintain immovable property in the FCT, Abuja.
- iii. An Order mandating the respondent to release to the applicant immediately the applicant's Certificate of Occupancy covering No. 62 Harper Street Wuse Zone 7, Abuja.
- iv. An Order of perpetual injunction restraining the respondent and any other persons acting under her instructions from further tampering with, confiscating detaining or performing any unauthorized improvement, applications and management on the property of the applicant of No. 62 Harper Street. Wuse Zone 7, Abuja.
- v. A declaration that the unauthorized collection of the C of O of No. 62 Harper Street Wuse Zone 7 and subsequent utilization of same by the respondent to make application to the development control and FCDA to effect structure change and improvement to the said property without the consent, knowledge and authorization of the applicant is illegal, unlawful, fraudulent and a breach of his right protected under section 43 and 44 of the Constitution of the Federal Republic of Nigeria (as amended).
- vi. Damages of Two Million Naira against the respondent for confiscating, detaining and appropriating the Applicant's title document and property at 62, Harper Street, Wuse Zone 7, Abuja from 20th January, 2009 till date of filing.

The said originating summons was supported by a 31-paragraph affidavit deposed to by the claimant/appellant and a written address of his counsel. The respondent, in opposition filed a 23-paragraph counter affidavit along with a written address of her counsel also. On receipt of the counter, the claimant/appellant on 11/06/2018 filed a 19 paragraphed further affidavit along with a reply on points of law.

At close of hearing, the trial court in a considered judgment dismissed the suit of the appellant with a cost of N50,000.00 in favour of the respondent.

Dissatisfied with the said judgment of the trial court, the appellant filed an eight grounds notice of appeal to this court on the 13th November, 2018. The record of appeal was transmitted to this court on the 10th December, 2018.

In line with the rules and practice of this court, parties filed and exchanged their respective briefs of

The appellant distilled three issues for the determination of is appeal in the appellant's brief of argument filed on the 25th January, 2019. These issues are:

1. Whether the trial court was not wrong in its interpretation and construction of exhibits A, B, C, D, and E and AA1, AA2, AA3, AA4 and AA5 by finding that the intention to transfer his legal interest in the subject matter to the respondent against laid down principles of acquisition of land in *Idundun v. Okumagba* (1976) 9-10 SC 227.
2. Whether in the peculiar circumstances of this case, positions of the pleadings, admission and evidence available, the concept of resulting trust is applicable to dispossess the appellant of this beneficial interest in the subject matter and confer same on the respondent who had no counter claims whatsoever in the case.
3. Whether the trial court did not fail in its primary duty of evaluating and ascribing evidential value to the evidence adduced by the parties in coming to a conclusion that the appellant failed to substantiate and proof his entitlement to the reliefs sought.

In response, counsel for the respondent adopted the three issues distilled by the appellant in the respondent's brief of argument dated and filed on the 19th February, 2019.

This appeal will be determined on the issues as distilled, adopted and argued by the parties. I now start with issues one and two.

Issues One and Two:

These issues are-

whether the trial court was not wrong in its interpretation and construction of exhibits A, B, C, D, and E and AA1, AA2, AA3, AA4 and AA5 by finding that the combined implication of these documents entails the appellant's intention to transfer his legal interest

in the subject matter to the respondent against laid down principles of acquisition of land in *Idundun v. Okumagba* (1976) 9 - 10 SC 227; and whether in the peculiar circumstances of this case, positions of the pleadings, admission and evidence available, the concept of resulting trust is applicable to dispossess the appellant of this beneficial interest in the subject matter and confer same on the respondent who had no counter-claims whatsoever in the case.

Counsel for the appellant while arguing these issues stated that the case of the appellant is that the interest and title he acquired in the subject matter is a legal interest as opposed to an interest in equity via resulting trust or other means having secured same through Allocation from the FCDA to which a Certificate of Occupancy was issued in his name in consonance with one of the recognized means of acquiring a legal title entrenched in the case of *Idundun v. Okumagba* (supra). He submitted that documents are direct proof of their content. He stated the trite position of the law that documentary evidences are regarded more authentic than oral evidence. He cited *Aiki v. Idowu* (2006) 9 NWLR (Pt. 984) 47, 65. That the trial court has the primary duty of construing documents made and exchanged by the parties during the formation of events leading to the cause of action. That the duty of the court is to give each document its desired import in order to bring out its legal significance. That where a process accommodates more than one document, that the whole set of documents are construed jointly in order to bring out the real effect of the instruments. That documents speak for itself per its content and that courts are under strict duty to give effect to plain and clear wordings of an instrument. That exhibit AA 1 in particular is so clear that it needs no constructions, permutation or extraneous importations.

Counsel wonders where the trial court manufactured or conceived in the same exhibit a corresponding instruction to the FCDA authorizing the respondent to collect the Certificate of Occupancy of the appellant on his behalf. He pointed out that when the wordings of a document/instruction are therefore plain and unambiguous, that it must be accorded its ordinary meaning. He cited *Aiki v. Idowu* (supra). He maintained that the appellant clearly expressed his sole and singular intentions/instructions/mandate to the respondent in form of a principal/agency relationship via exhibit AA 1. That the position would not have been different if the respondent was not the spouse of the appellant but his representative, Attorney or agent. That no law confers ownership of land on an agent who was merely instructed to go and facilitate or arrange a form of payment acceptable to the seller except the subject matter was used as collateral to the arranged payment or a deed of transfer to the agent was specifically made. Counsel emphasized that in all agency relationships and transaction, that an agent is bound by the tenet of his instruction and has no power to go outside the mandate. That where an agent decides to act outside the express instruction of the principal, he

is liable to the extent of those frivolities. He stated the trite position of the law that a contract made by an agent acting within the scope of his authority for a disclosed principal is in law the contract of the principal and as such the principal and not the agent is the proper person to sue or be sued upon the contract. He relied on *Carlen (Nig.) Ltd v. Unijos* (1994) 1 NWLR (Pt. 323)631 at 659 and *Pwol v. Union Bank Plc* (1991) 1 NWLR (Pt.588)631 at 636.

Counsel further submitted that the judgment of the trial court expressed the direct opposite and contrary view to the above position of the law. That the judgment purport to transfer the appellant's interest to the respondent via a letter of instruction from the appellant to the respondent as his agent even though in fairness to the respondent, that was not the case put forward by her rather, it was a mere gratuitous service from the judge to her. That the only option available to the respondent was to sue the appellant at a later time to recover the said sum on breach of contract. He cited *Niger Progress Ltd v. N.E.L. Corp* (1989) 20 NSCC (Pt.99) 233 at 221; (1989) 3 NWLR (Pt. 107) 68 at 85. That the only evidential value exhibit AA2, AA3, AA4 and AA5; the receipt of payment could do is never to take the place of a deed of transfer but an evidence of the appellant's liability to the respondent in a successful claim for specific damages which definitely is/was never done either separately or even imported into this suit via a counter-claim. He stated that the court's construe of exhibits AA 1 especially in conjunction with AA2 - AA5 as a deed of transfer or a deed of gift is outrageous, unreasonable, self-service and against all known law. That none of the exhibits under reference depict any such intention of the party. Than the exhibits under reference can never supplant a legal interest or holding in a property. That having established full legal holding/interest in the land via allocation and subsequent acquisition of a certificate of occupancy that the issue of equity of any sort is inapplicable and completely excluded from this case. That the law does not impute an intention to enter into a legal relationship where the circumstances and the conducts of the parties negates any such intention of the kind. He cited *Bako v. Nigerian Pool Company Ltd* (1966) NCLR 200 at 202 - 204. That having donated only a letter of authorization to the respondent to arrange payment without any instrument transferring the title from the appellant to the respondent which anticipates a Deed of Transfer, Power of Attorney or even a Deed of Gift (being still married to each other) then law is settled that the intentions of the parties was initiated and completed with the carrying out of the payment. He opined that having confined themselves and intention solely to exhibit AA 1 without a distinct instrument authorizing collection or a Deed made for that purpose, that nothing more can be inferred into the document as the decision not to tow that lane even though the option was opened to them at the relevant time indicates a deliberate exclusion of those instruments that were smuggled into it by the trial court. Counsel maintained that the holding of the trial court is perverse and a finding made per in curia. That the judgment negates the law on acquisition of

land under the Nigerian law and against the appellant's constitutional right to acquire movable and immovable property anywhere in Nigeria by virtue of section 43 and 44 of the Constitution of Nigeria (1999) as amended which is inviolable and cannot be eroded by schemes, ploy or conjunctions of any sort. He urged the court to resolve this issues in favour of the appellant and set aside all findings of the lower court in this regard.

Counsel for the respondent argued issues one and three together. He argued contrary to the appellant's submission on these two issues that the trial court should not have looked beyond the documents to see the circumstances under which the documents themselves came into existence. He submitted that such would amount to the court abdicating its position as the temple of justice. He posited that the facts of this case are very clear. That the appellant and the respondent are husband and wife with seven (7) children. That after they resolved their marital issues, the appellant surrendered the Letter of Offer to the respondent to take to her bank with exhibit AA 1 to source for a loan to buy the house. That the respondent paid for the house and eventually collected the Certificate of Occupancy which the appellant now wants to be surrendered to him for no other reason than to sell. He argued that the appellant did not pay the purchase price to the Ad Hoc Committee and that the documents themselves alone do not tell the whole story and that is why the law of equity developed the principle of resulting or constructive trust where in a situation like this a person buys property in the name of another and the buyer is not making a gift of the property to the person in whose name it is bought, he acquired an equitable beneficial interest. He posited that the arguments of the appellant in issues 1 and 3 that the trial court should limit itself just to the documents does not represent the law. He urged the court to resolve both issues against the appellant.

Furthermore, the counsel for the appellant under these issues argued that what was validly initiated, created and conferred on the appellant is a legal holding/interest in the land devoid of any defects whatsoever and that at the point of securing same and thereafter, nothing was done by the appellant or his representative transferring the said interest to any other person including the respondent. That no elements or ingredient of equity via resulting, constructive or applied trust whatsoever as the real desire of the appellant to retain his interest is supported by pleadings on both sides and admissions from the respondent against her interest. That the trial judge was wrong and occasioned gross miscarriage of justice against the appellant in applying the concept of resulting trust in a situation completely adverse to its tenets and dictates. He maintained that head or tail, that the judgment of the trial judge is erroneous and at best, propagates unconscionable bargain. He relied on *Evans v. Liewellin* (1787) 1 Cox Eq. Cas.33 and *Fry v. Lane* (1888) 40 Ch.D 312 and *Ajani v. Okusaga* (1976) 1 FNR 188 at 194.

He submitted further, that it can never be equitable to allow the respondent to stage a fraud based concept of appearing to support and advise the husband as a finance expert to induce him into allowing her carry out a proposition made by her and with the killing and cooking of a chicken believe she has effected a transfer of a valid legal title to herself behind the owner. That a court of law should not under any circumstances express this fraud as resulting trust. He posited that the trial judge deliberately jettisoned the appellant's evidence via his further affidavit on pages 57-59 of the record, which is to the effect that the respondent as a staff of the same office was not under disabilities to express interest in land and purchase same. That the concept of resulting trust just like the concept of equity in general is grounded and sealed on the INTENTIONS of the parties and that the Intention of the parties is essential to the determination of equitable relationships and claims He cited *Atta v. Ezenah* (2000) 11 NWLR (Pt. 678) 363; *Ughutevbe v. Shonowo* (2004) 16 NWLR (Pt. 899) 300 and *Petitt. v. Petin* (1970) A.C.777. That the particular act of jettisoning and avoiding any instrument of Deed of gift, Transfer, Power of Attorney depicts the clear intentions of both parties to this transaction. That the trial court being a stranger to the transaction should not add or subtract from it or import any provisions into it. He relied on *Nimanteks Associate v. Marco Const. Co Ltd* (1991) 2 NWLR (Pt.174) 411. That resulting trust is not appropriate in a case of this nature considering the intimacy between the spouses at the time of payment. that presumption of advancement is more appropriate in relationship between husband and wife. That the cases cited by the trial judge are distinguishable from this present suit and do not apply to this case as the parties in this case are still married and not divorced. He cited *Idundun v. Okumagba* (1976) 10 SC 140. Counsel pointed out that the respondent should not have pleaded the concept of resulting trust, because that was not her case. That her case was that she held on to the property because of the suspicion that the appellant intended to sell off the property. That a fact not pleaded cannot be led evidence upon as evidence led on facts not pleaded goes to no issue. He relied on *Ukpo v. Ngaji* (2010)1 NWLR (Pt.1174),175,201-202. That a court of law has no powers, vires and jurisdiction to grant a relief not sought. He cited *Nidocco Ltd v. Gbajabiamila* (2013) 14 NWLR Pt. 1374 pg.350, 396-397, *Moriki v. Adamu* (2001) 15 NWLR (Pt.737), 666 at 681-682 H-A. He urged the court to resolve this issue in favour of the appellant.

Counsel for the respondent while arguing issue two contrary to the appellant's submission, stated that the appellant's argument clearly shows that even though by his own admission he instructed the respondent to make arrangements for a loan to buy the property and that himself never paid the purchase price for the property, he rejects the doctrine of resulting trust and that the court should just collect the title documents for him. That where a person buys property in the name of another and the intention is clear that the buyer is not making a gift to the other, that equity creates an implied or a resulting or constructive trust

in favour of the person who actually furnished the money. That a crucial point a plaintiff claiming the existence of a resulting trust must prove is the existence of any indication that the parties intended to create such a trust as all-time relevant to the purchased property. He cited *Idris v. Obafemi* (2004) 11 NWLR (Pt. 884) 396 at 413 paras. A-C. Counsel reproduced exhibit AA 1, which is a letter written by the appellant to the respondent's bank permitting the respondent to raise funds to buy the property. That the intention of the appellant that the respondent should pay for the property is clear ab initio and that it is the same house both the appellant, the respondent and their children had occupied for 34 years. He stated that the appellant is stopped from denying the truth of what transpired between him and the respondent regarding the Letter of Offer and the purchase of the house of the respondent. He cited section 169 of the Evidence Act 2011. He urged the court to resolve this issue in favour of the respondent.

The property in focus in this case is No.62 Harper Street Wuse 7, Abuja. This property is said to be covered by a Certificate of Occupancy No. L66 3W-FE 152-67 FIR -1199 A-10 dated 5/03/2008. The facts show clearly that the parties are married as couple. The property was formerly the Government House the parties occupied as workers in Government service. It was later sold to the appellant but it was paid for by a Loan procured by the respondent using the title of the property.

The learned trial Judge in his judgment after reviewing the evidence held as follows:

“It is the view of the court that a sober consideration of the combined effects of the contents of exhibit AA1 through AA2 to AA5 and the claimant's deposition that the property was completely paid for in his name and instruction leads to the inescapable conclusion that the claimant vide exhibit AA 1 authorizing the respondent/her bank to process instalmental payment for the house and pursuant thereto the respondent as shown in exhibit AA2 to AA5 raised funds and completely paid purchase price for the house in the claimant's name and with his mandate. This being the case, the circumstances in which the Certificate of Occupancy in respect of the property was issued to the respondent though in the claimant's name become clear and understandable. The Claimant cannot in the circumstances validly contend that the certificate was procured by the respondent fraudulently for that he did not authorized the respondent in exhibit AA 1 to process payment by installment payment for the house through her bank, the claimant by implication authorized the release of the Certificate of Occupancy of the house to the respondent upon completion of payment of the purchased price. Against this background, he cannot in this proceeding seek to resile from the implications or resultant effect of exhibit AA 1 he voluntarily and undeniably made. As rightly submitted by the learned respondent's counsel, the claimant is by the force

of section 169 of the Evidence Act 2011 estopped from denying being privy to the respondent embarking upon payment for the property as disclosed in Exhibits AA2 to AA5.

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By reasons of the foregoing findings and conclusions, the court holds that inasmuch as the claimant is entitled under section 43 and 44 of the 1999 Constitution of Nigeria and provisions of the Matrimonial Causes Act and Ruled to own, maintain and control immovable property, in the circumstances of this case as analyzed above, the beneficial rights in the property in dispute herein being No. 62 Harper Street, Wuse Zone 7 Abuja vests in the respondent by reason of a resulting trust on account of the respondent having wholly paid for the property in the name of the claimant and upon his mandate.

By the operation of equity, the claimant in whose names the property was acquired does not have beneficial rights in it. (See pages 85 to 86 of the record of appeal).

The lower court from the foregoing decision relied heavily on the doctrine of resulting trust. Resulting trust is a Trust which has been applied by our courts in many cases to date.

In the case of *Adekeye Ors. v. Akin Olugbade* (1987) 3 NWLR (Pt. 60) 214, Oputa, JSC, held as follows:

“The consensus of legal and judicial opinion is that the trust of a legal estate whether taken in the name of the purchasers and others jointly or in the names of others without that of the purchaser. Whether in one name or several, whether jointly of purchase money. See *Re Scottish Equitable Life Assurance Society*: (1992)1 Ch.282: *The Venture* (1908) P.218”

It is significant to note that a person who advances money or effect payment for the trust has the trust of the Legal Estate. Similarly, in the case of *Obika v. Obika* (2018) LPELR-43965 (CA) this court held:

"In the instant case, the respondent pleaded and led admissible and credible evidence to establish that the property in dispute was purchased and developed with funds/proceeds from his father's estate, thus, he claimed ownership over the said property. I have carefully examined all the pieces of evidence on record and I agree with the learned trial judge that the appellant's father purchased the property in dispute from the funds obtained or sourced from the estate of the respondent's father. Thus, the respondent can conveniently lay claim

to the ownership of the property as he did, notwithstanding the fact that the property was bought in the name of appellant's father. Indeed, appellant's father is deemed in law to have purchased the property and held the same in trust for the respondent. The relationship and transaction between appellant's father and the respondent can be regarded as one of the classic examples of Resulting or Implied Trust. See the case of *Adekeye v. Akin-Olugbade* (1987) NWLR (Pt.60) 214; (1987) LPELR - (104) (SC) where His Lordship Oputa, JSC (of blessed memory) enunciated as follows: "An implied trust is thus a trust founded upon the unexpressed but presumed intention of the settler. One common example of implied trust is where on a purchase, property is conveyed into the name of someone other than the purchaser. The consensus of legal and judicial opinion is - that the trust of a legal estate whether taken in the name of the purchasers and others jointly or in the names of others without that of the purchaser, whether in one name or several, whether jointly or successive, results to the man who advances the purchase money: See *Re Scottish Equitable Life Assurance Society* (1992)1 Ch.282; *The Venture* (1908) P.218" See also the case of *Madu v. Madu* (2008) 6 NWLR (Pt. 1083) 296). In the instant case, the funds utilized towards the purchase of the property was realized from the respondent's father estate, thus, the respondent was right and to an extent as would be seen anon, to lay claim to the property. Indeed, that assumption to a certain or great extent is correct."

See also the case of *Ughutevbe v. Shonowo & Anor*: (2004) LPELR - 3317 (SC); (2004) 16 NWLR (Pt. 899) 300. In the instant case, the subject matter falls within the province of the law of trust and in particular the doctrine of resulting trust. The general proposition is that where on a purchase, property is conveyed in the name of someone other than the purchaser, the presumption is that the trust of the legal estate results to the person who advances the purchase money.

The position taken by the learned trial judge in the instant case is the position of the law. It cannot be faulted having regards to the facts and circumstances of the instant case. The respondent, it was clearly established was the person who sought for loan and paid the purchase price of the property. The resulting trust therefore, is to the respondent. It sounds tendentious and outrageously inequitable for the appellant who did not put money into the purchase of the property to turn round and claim the property against the respondent whose financial commitment he (appellant) did not deny. It is in this respect that issues one and two are resolved in favour of the respondent.

Issue Three:

This issue is- Whether the trial court did not fail in its primary duty of evaluating and ascribing evidential value to the evidence adduced by the parties in coming to a conclusion that the appellant failed to substantiate and proof his entitlement to the reliefs sought.

Counsel for the appellant while arguing this issue stated that the lower court failed in its duty of properly evaluating and ascribing the right probative and evidential value to exhibits a, b, c, d and e attached by the appellant in proof of his case and exhibit AA 1, AA2, AA3, AA4 and AA5 also attached by the respondent as proof of her defense. That being the plaintiff in a suit for declaration of right to a land propriety, upon whom the lot falls on to succeed on the strength of his case. That he furnished the court with credible, cogent and convincing evidence of his legal title to No. 62 Harper Street, Wuse Zone 7, Abuja covered by a Certificate of Occupancy dated 05/03/2008 No: L663 WFE152- 67FIR-1199 A-10 in the name: O.J.J. Aguocha.

Counsel further argued that the quantum of proof expected in a civil matter of this nature is proof on the preponderance of evidence/balance of probability. That the essence of this burden shifts from the plaintiff to the respondent who must then embrace the same duty of onus of proof to lead evidence to controvert the case already established by the plaintiff. That the plaintiff having cogently established his entitlement to the claim without a corresponding rebuttal by way of a better proof of legal interest stronger than that already proven by the plaintiff as in this case as entrenched in *Oni v. Ogunleye* (1999) 2 NWLR (Pt. 135) 745. That the court must find in favour of the appellant and order return of his title to him immediately and not the applicable doctrine of equity sought to be imposed on the parties in the fact of strong evidence substantiating real legal interest as against equity.

On the applicability of section 15 of the Court of Appeal Act; counsel submitted that the present case deserves the application of the inherent powers of this court preserved under section 15 of the Court of Appeal Act to make the necessary order specifically sought before the trial court. He reproduced the said section and urged the court to invoke its powers under it to make the declarations sought by the appellant before the trial court.

Counsel urged the court to allow the appeal, set aside the judgment of the trial court and grant all the order as prayed by the appellant.

Evaluation of evidence, it is settled, is the primary responsibility of a trial judge. In the instant case, the learned trial judge took time to look into the affidavit, counter affidavit and further affidavit of the

parties. At pages 82 to 86 of the record of appeal, the learned trial judge elaborately evaluated all the evidence placed before it by the parties. The exhibits were all looked at. It should be noted that an appeal is not a new trial. Where there is credible and overwhelming evidence in support of the respondent, the trial court's decision should not be interfered with. See the cases of *Ajibulu v. Ajayi* (2004) 11 NWLR (Pt. 885) 458, *Odukwe v. Ogunbiyi* (1998) 8 NWLR (Pt. 561) 338, *Ojengbede v. Esan & Anor* (2001) 18 NWLR (Pt. 746) 771.

I have carefully gone through the record of this instant case. There is nothing found to be wrong against the evaluation of the lower court and there is no injustice occasioned. This issue is resolved in favour of the respondent.

From the foregoing therefore, this appeal is lacking in merit.

The appeal is hereby dismissed. The decision of lower court in Suit No: CV/1100/18, delivered on 13th September, 2018, is affirmed.

IGE, J.C.A.: I agree.

WILLIAMS-DAWODU, J.C.A.: I have had the advantage of reading the lead judgment of my learned brother, Stephen Jonah Adah, JCA, just delivered and I am in agreement with the reasoning and conclusion contained therein.

I also dismiss the appeal for lacking in merit and affirm the judgment of the lower court delivered on the 13th of September, 2018 in Suit No: CV/1100/18.

I make no order as to costs.

Appeal dismissed.