

SUPREME COURT OF NIGERIA
27TH FEBRUARY, 2004. SC. 226/2000
CORAM:- S. U. ONU, A. I. IGUH, U. A. KALGO, N. TOBI,
I. C. PATS-ACHOLONU, JJSC.

MISS CHINYE A. M. EZENNAH APPELLANT
AND
ALHAJI MAHMOUD I. ATTA RESPONDENT

EVIDENCE - Testimony of a party to a case - No law provides that a party must give evidence - At the trial - Though where he is the only competent witness - He stands the risk of having his witnesses' evidence - Regarded as hearsay - If he fails to give evidence (H1)

JUDGMENTS - Appeals - Adverse issues arising from judgment - A party who has judgment in his favour - And who has not cross-appealed or taken out a respondent's notice - Is not entitled to raise any adverse issue - Arising from the judgment (H2)

MATRIMONIAL CAUSES - Agreement to marry - A mere convivial or romantic relationship without more - Is not enough for a court - To find an agreement to marry (H3)

MATRIMONIAL CAUSES - Agreement to marry - The law will in appropriate cases - Hold that parties intended to marry - In the absence of any written agreement to marry (H4)

MATRIMONIAL CAUSES - Gift of property on basis of agreement to marry - As the appellant's testimony was uncontradicted - There was no evidence to show that the property in dispute was put up - Based on an agreement to marry - Or that there was such an agreement to marry at all (H5)

LAND LAW - Certificate of occupancy - Legal basis of - Holder holds subject to conditions - Stipulated in the Land Use Act (H6)

LAND LAW - Proper issue of certificate of occupancy - Presumptions raised thereby - Where rebutted - Court can revoke the certificate (H7)

TRUSTS - Resulting trust - Pleading of - Defendant failed to plead the trust and its breach in the statement of defence - Which is prejudicial to his case (H8)

PLEADINGS - Resulting trust - Material facts - What is required to be pleaded is material facts - As opposed to the legal result or legal consequence - As held by lord Denning in Re Vandervell's Trust (No2) (H9)

TRUSTS - Resulting Trust - There is no evidence that appellant holds the property in dispute in trust for the respondent - Particularly in the absence of proof of agreement of marriage between them (H10)

MATRIMONIAL CAUSES - Premarital gifts - Cannot be predicated on a contract to marry - Parties must be ad idem in respect of any collateral transaction - Relating to the intended marriage (H11)

CONTRACTS - Agreement to marry - Premarital gifts - When they may qualify as gifts in furtherance of an agreement to marry (H12)

APPEALS - Concurrent findings of lower courts - Where perverse - The Supreme Court can interfere - And give the correct findings - As the evidence in the record show (H13)

FACTS

The appellant, as plaintiff, had filed an action seeking the following reliefs: “1. A declaration that the plaintiff is the bona fide owner of all that plot No. 999 Cadastral Zone B6, Mabuchi District Abuja. 2. A mandatory order directing the defendant to hand over the Federal Republic of Nigeria certificate of occupancy No. FCT/ABU/DT. 291 covering the said plot to the plaintiff forthwith. 3. A perpetual injunction restraining the defendant

either by himself, his agents or privies howsoever called from further trespassing on the land. 4. Two million naira (N2,000,000.00) as general damages for trespass on the said plot.” The respondent as defendant, did not accept liability. He rather counter-claimed, asking for a declaration that the defendant is the owner of the said plot notwithstanding the fact that the plaintiff’s name is on the certificate of occupancy.

The facts of the case were that the appellant and respondent were in some romance which later fell apart in 1998 when the appellant got married to another person. When the relationship was on, the appellant went to England in 1994 for further studies apparently on the sponsorship of the respondent. In her evidence, it was established that there was a boy friend/girl friend relationship going on between them although the appellant stated that there was no agreement to marry as the respondent always stated that he had problems with his sperm count. The respondent however claimed that there was an agreement between them to get married.

As to the property in dispute, according to the appellant, she applied for land in August 1992. She completed the application form in her own handwriting and signed it. She paid an application fee of N300.00. Her signature is not on the portion meant for signature of applicant. It is the respondent's signature and his name, apparently signing for the appellant. An additional fee of N6,700.00 was introduced by the Federal Capital Territory. She paid the fee, vide Exhibits B and B1. Originals of Exhibit B and B1 were handed over to the respondent who was to be following up the application. Respondent sent to the appellant the certificate of occupancy for her signature. Respondent refused to give her the certificate of occupancy and started developing the land.

Respondent who did not testify had quite a different story in his statement of defence. According to DW1, a builder, he told the court that the appellant told him that she was the proposed wife of the man he was working for. She inspected the building and effected some corrections to the building. She also brought a welder who did the iron work in the building. DW2 also testified in favour of the respondent.

The learned trial judge, after hearing evidence gave judgment in

favour of the appellant in respect of claims 1, 2 and 3. He refused claim 4 on general damages for trespass. He ordered the appellant to take possession of both the plot of land at Mabuchi and the certificate of occupancy. Respondent appealed to the court of appeal and appellant as B respondent cross appealed. That court unanimously allows the appeal and dismissed the cross appeal. Dissatisfied the appellant has now filed an appeal to the supreme court.

ISSUES FOR DETERMINATION

C “1. Was the court of Appeal right to hold that the Appellant is the owner of the property lying and situated at Plot 999 Cadastral Zone B6 Mabuchi District covered by the Certificate of Occupancy No. FCT/ABU/DT 291 notwithstanding the name of the Respondent there.

D 2. Was the Court of Appeal right to hold that the land, Plot No. 999 Mabuchi district covered by Certificate of Occupancy No. FCT/ABU/DT 291 was allocated to the appellant by the Minister Federal Capital Territory (as a gift) pursuant to a promise of marriage to the Respondent.

E 3. Is the finding of the Court of Appeal that it was the ‘Appellant in furtherance of the marriage agreement acquired the land’... supported by evidence and the facts before the court.

F 4. Whether without a claim for breach of promise of marriage the holding of the Court of Appeal that the whole transaction was based on the marriage agreement between the parties could stand.

5. Whether any case of resulting trust was made out by the Respondent.”

G **HELD** (Unanimously allowing the appeal per lead judgment of TOBI JSC)

EVIDENCE - Testimony of a party to a case

H 1. Learned counsel for the appellant submitted that the failure on the part of the respondent to testify before the High Court in respect of his counter-claim is fatal to his case. With respect, I do not agree with her. I know of no procedural law in our justice system which provides that a party must give evidence at the trial. The burden of proof merely requires the party alleging or asserting a fact to prove the fact. And such a party can do so

by calling witness or witnesses to prove his allegation or assertion.

Accordingly, our adjectival law and the rules of court do not foist on a party the duty to give evidence. While it is desirable that he gives evidence, there are situations where, from the facts of the case, some other person is in a better position to give evidence because that person participated in the particular matter and did it and saw it all. There could also be a situation where some other person, though did not participate in the matter, is in a better position to give evidence because he knows the matter much more than the party. However, where the only competent witness is the party in the case in the sense that he was directly involved in the transaction, and no other person, he then stands the risk of exposing the evidence of his witness or witnesses as a bundle of hearsay. (p. 611 E)

JUDGMENTS - Appeals

2. I do not think the above submission is available to counsel. A party who has judgment in his favour and who has not cross-appealed or who has not taken out a respondent's notice is not entitled to raise any adverse issue arising from the judgment. The only way to show grievance of a judgment is by way of appeal and in certain cases by way of a respondent's notice. In view of the fact that the appellant had judgment in the High Court, all that she should have done, if not satisfied with the statement of the trial judge on the issue of payment of the processing fee of N300.00 by the respondent was to commence a cross-appeal. In the absence of that, the appellant has to accept the decision of the High Court with all its sweetness and bitterness *cum onere*¹. And what is more, the judgment before this court on appeal is the judgment of the Court of appeal and not the judgment of the High Court. In the circumstances, I shall discountenance all the negative issues raised against the judgment of the learned trial judge by counsel for the appellant. (p. 612 F)

MATRIMONIAL CAUSES - Agreement to marry

3. Marriage is regarded as a very sacred institution both in our jurisprudence and in our sociology. Accordingly an agreement to enter into a

marriage should leave nobody in doubt as to the real intention of the parties to enter into a marriage. A mere convivial or romantic relationship without more is not enough for a court to found an agreement to marry. (p. 613E)

B When the law will hold that parties intended to marry

4. While the law may at times require that an agreement to marry should be in writing, the law will be prepared to hold, in appropriate cases, that the parties intended to marry in the absence of any written agreement. In this respect, the court will take into consideration the institution of marriage as a trade in the relevant society and how persons generally engage themselves in agreement of marriage. In this regard, the law will be more stringent in agreement to enter into marriage under the Matrimonial Causes Act and to some extent under Islamic Law than agreement to enter into marriage under customary law. I say this because while the first two types of marriages have settled principles and formalities of marriage, the third one is essentially transient, depending upon the custom, cultures and ethos of a given society. (p. 613 F)

E Gift of property on basis of agreement to marry

5. I could not place my hand on any evidence by the witnesses that the property in dispute was developed because the appellant and the respondent agreed to marry. If anything, appellant said in her evidence that there was no issue of marriage between them. Let me read part of her evidence even if at the expense of prolixity.

“Issue of marriage had not been discussed though because on several occasions I raise it he will say he had problem as to his sperm count. The issue of marriage therefore did not arise. He went on telling me that he would encourage me to get a husband and then he would sponsor the marriage. I went on insisting that it was him I want to marry. He went on seeing me more often. I told my mother who cautioned him to allow me some space”.

Under cross-examination, appellant said:

“I met defendant in January, 1993 in my younger sister’s boy friend’s house. He there and then sought me as his girl friend. I refused

on that day. But we went on as father/daughter relationship. He was my guardian. Later I agreed to be his girl friend. The defendant refused to go and see my parents on the gifts and offers.

In view of the fact that the respondent did not give evidence to contradict the above evidence, particularly in respect of his refusal to go and see the parents of the appellant, it is difficult to come to the conclusion that there was really an agreement to marry; not to talk of such an agreement based on the putting up of the property in dispute. I must also say that not even DW1 and DW2 gave evidence in contradiction of the evidence of the appellant that the respondent failed to see her parents in respect of a possible matrimony. The evidence of the appellant, being uncontradicted is accepted by me. See National Insurance Corp. of Nigeria v. Power and Ind. Eng. Co. Ltd. (1986) 1 NWLR (Pt. 14) 1.

I still maintain my position that there is no evidence before the learned trial Judge that the property was purchased by the respondent in furtherance of an agreement or contract to marry. Unfortunately, neither the learned trial Judge nor the Court of Appeal specifically mentioned such evidence.

I do not see such evidence given by DW2. Perhaps I should return to it once more. All that the witness said is that the respondent introduced the appellant to him as his fiancée. He did not say that the property was procured because there was an agreement between the appellant and the respondent to marry. The evidence of the witness is at pages 30 and 31. (p. 615 C/ 620 G)

LAND LAW - Certificate of occupancy - Legal basis of

6. What is the legal basis of a certificate of occupancy? A holder of a certificate of occupancy holds the title to the property and subject only to the conditions stipulated in the Land Use Act. A certificate of occupancy creates a term of years absolute or a lease for a number of years stated therein. See Chiroma v. Suwa (1986) 1 NWLR (Pt. 19) 751. The greatest legal estate that can now subsist under the Land Use Act is a term of years. The grant of a term of years under a certificate of occupancy is in substance a lease. See Dr. Otti v. Attorney-General of Plateau State (1985) HCNR 787. (p. 617 D)

LAND LAW - Proper issue of certificate of occupancy

7. In other words, a certificate of occupancy properly issued by a competent authority raises the presumption that the holder is the owner in exclusive possession of the land in respect thereof. Such a certificate also raises the presumption that at the time it was issued there was not in existence a customary owner whose title has not been revoked. The presumption is however rebuttable because if it is proved by evidence that another person had better title to the land before the issuance of the certificate of occupancy then the court can revoke it. See Osazuwa v. Oji (1999) 13 NWLR (Pt. 634) 286. (p. 617 F)

TRUSTS - Resulting trust - Pleading of

8. It is clear from the wordings of Order 25 Rule 5(1) of the Rules of Court that the breach of trust shall be pleaded. There is no such pleading in the statement of defence and that is prejudicial to the case of the respondent. It is trite law that rules of court must be followed and obeyed by the parties and the courts. See Solanke v. Somefun (1974) 1 SC 41. (p. 618 H)

PLEADINGS - Resulting trust - Material facts

9. I do not think the passage cited by learned counsel above is helpful to the case of the respondent. Lord Denning was careful in distinguishing between the pleading of the material facts as opposed to the legal result or legal consequence. I do not see where the respondent pleaded relevant facts in relation to the doctrine of resulting trust. (p. 619 B)

TRUSTS - Resulting Trust

10. Is there any evidence before this court that the respondent purchased the property in dispute for the appellant? Is there any evidence that the appellant holds the property in dispute in trust for the respondent? I do not see any such evidence. None of the three witnesses for the respondent gave such evidence. I do not see any relation of a settlor and a beneficiary in the relationship between the respondent and the appellant respectively.

Assuming without conceding that, the resulting trust was properly

pleaded, the law could not have availed the respondent particularly in the absence of proof of an agreement of marriage between the appellant and the respondent. (p. 619 G)

MATRIMONIAL CAUSES - Premarital gifts

B

11. Although the meaning of fiancée is the person one is going to marry or the person to whom one is engaged as one can say “Jimoke” is my fiancée” or “Aisha is my fiancée”, that cannot be interpreted to mean that any premarital gift is predicated on an agreement or contract to marry. An agreement or contract to marry is a bilateral affair between a man and a woman and both parties must be ad idem in respect of any collateral transaction relating to the intended marriage. (p. 621 B) C

CONTRACTS - Agreement to marry

D

12. It seems to me that the learned trial Judge was carried away by the quantity, quality and magnificence of the gifts in coming to conclusion that there was an agreement to marry. Is that the law? No. Premarital gifts, in order to qualify as gifts in furtherance of an agreement to marry, must be clearly, cleanly and unequivocally traceable to an agreement on the part of the parties to marry. Where gifts part from any of the parties to the other on love and not on the business of agreement to marry, with all the ingredients of offer, acceptance, consideration, intention to create legal relation and capacity to contract the agreement, the court must not come to the conclusion that the parties agreed to get married hence the gifts. That is not talking law. (p. 621 D) E F

APPEALS - Concurrent findings of lower courts

G

13. It is trite law that where the findings of trial court and indeed the concurrent findings of the Judge and the Court of Appeal are perverse, this court can interfere and give the correct findings as the evidence in the Record show. See Ajeigbe v. Odedina (1988) 1 NWLR (Pt. 72) 584; Okonkwo v. Okolo (1988) 2 NWLR (Pt. 79) 632’ Ibhafidon v. Igbinosun (2001) 8 NWLR (Pt. 716) 653. In view of the fact that the finding of the learned trial Judge which was acceptable by Court of Appeal on the issue H

of agreement to marry is not borne out from the Record, I regard it as perverse and I accordingly interfere. The result of my interference is to reject that finding. (p. 622 B)

NOTABLE POINTS OF INTEREST

B ONUJSC

1. Ways of proving title to land

In a civil claim of title to or ownership of land, for a party to succeed, he must prove his title in one of the five ways laid down in this Court's decision of Idundun v. Okumagba (1976) 9-10 S. C. 227 followed by a long line of other decided authorities to the following effect:

1. Proof by traditional evidence
2. Proof by production of documents of title duly authenti-

D cated to prove title.

3. Proof by acts of ownership extending over a sufficient length of time, numerous and positive as to warrant the inference that the person is the true owner. Vide Ekpo v Ita 11 NLR 68.

E 4. Proof by acts of long possession and

5. Proof of possession of connected or adjacent land in circumstances probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute. (p. 625 B)

F KALGOJSC

2. Pleadings not supported by evidence is deemed abandoned

This clearly means that all the matters pleaded by the respondent in his defence and counter-claim were not substantiated by evidence and it is trite law that pleadings simpliciter not supported by evidence cannot be accepted as evidence and is deemed abandoned. (p. 632 C)

REPRESENTATION

H J.O. Adesina (Mrs.) for the Appellant.

O.A.R. Ogunde Esq., S. A. Akasawua and A.K. Eleyo
For the Respondent.

CASES REFERRED TO

- Chukwu v Diala (1999) 6 NWLR (Part 608) 674 at 681
 Orubon v. Gbondu (1999) 11 NWLR (Part 661) 668
 Otukpo v. John (2000) 8 NWLR (Part 669) 507 at 525
 Latiko v. Kutigi (1999) 3 NWLR (Part 596) 509 at 510 B
 Okeke v. State (1999) 2 NWLR (Part 590) 246 at 259
 Tokimi v. Fagite (1999) 10 NWLR (Part 624) 588 at 591
 Ladipo v. Ajani (1997) 8 NWLR (Part 516) 356; (1997) 7 KLR (pt 54) 1709
 Helen Nkume v. Regd Trustees of Aba (1998) 10 NWLR (Part 570) 514
 Olohunde v. Adeyoju (2000) 10 NWLR (Part 67) Page 562 at 597; (2000) C
 6 KLR (pt 107) 2255
 Ona v. Atenda (2000) 5 NWLR (part 656) 244 at 274
 Adisa v. Oyinwola (2000) 10 NWLR (Part 674) 116; (2000) 6 KLR (pt D
 106) 1915

STATUTES & RULES REFERRED TO

- Land Use Act ss. 5(1), 49
 Supreme Court Rules 1990 O. 8 r. 13(1) E
 Matrimonial Causes Act 1990

LEAD JUDGMENT BY TOBI JSC

The appellant and the respondent were in love, or should I say were F
 in some romance. The appellant was the plaintiff in the High Court. The
 respondent was the defendant. I do not know when the love or romance
 started. It could be in 1991. It could be earlier. It could be later. Paragraph
 3 of the statement of defence seems to say 1991. The appellant said in her
 evidence that it was in 1993. Let me not attempt to settle that quarrel. I G
 have more serious quarrels to settle. After all, the date of the love or
 romance is not really important. The important thing is that things started
 falling apart. When, I do not know. But I think the affair packed up in
 1998. Appellant said so. She said she got married in 1998; not to the H
 respondent. When the relationship was on, appellant went to England in
 1994 for further studies. The respondent was in Nigeria. He made the
 London visits. It would appear the love or romance continued when the

appellant was in England.

Although the appellant merely averred in paragraph 2 of her statement of claim that the respondent, a businessman, was “well known” to her, the respondent averred in paragraph 3 of his statement of defence B that “both of them agreed to get married”. He specifically denied in paragraph 8 of his statement of defence that he was just “well known” to the appellant. To him, “there was a relationship between them known to the plaintiff’s parents, siblings and relations.”

C In her evidence in-chief, appellant would appear to have expanded the real meaning of “well known” in her own way. She opened her evidence in the following ten relevant sentences:

“I know the defendant. He is my man-friend. We met early 1993. We had a boy-friend/ girl-friend relationship. This caused problem in his D family and he decided to send me to England to school in January 1994... He was the Chairman of First Bank... He often came to see me in school. Our relationship was normal. Nothing extra-ordinary to it. Issue of marriage had not been discussed though because on several occasions I E raised it he would say he had problem as to his sperm count. The issue of marriage therefore did not arise”.

And so the appellant opened up. She expanded the meaning of “well known” not only as a close acquaintance but in her words “man friend” F which to her meant a boy-friend/girl-friend relationship. That is quite different from an intention that two of them should get married some day. In her evidence, what was between them negatively in terms of a possible matrimony, was the respondent’s sperm count. I am therefore not wrong in describing the relationship as one of love and or romance from the point G of view of the appellant. The relationship was however much more than the neutral expression of ‘well known’ I now see the reason behind the denial in paragraph 3 of the statement of defence.

Let me briefly summarise appellant’s evidence in respect of the H property. It is Plot 999 Cadastral Zone B6, Mabuchi District, Abuja. She applied for land in August 1992. File No. DT291 belongs to her. She completed the application form in her own handwriting and signed it. She paid an application fee of N300.00. That was in August, 1993. Her

signature is not on the portion meant for signature of applicant. It is the respondent's signature and his name, apparently signing for the appellant. An additional fee of N6,700.00 was introduced by the Federal Capital Territory. She paid the fee, vide Exhibits B and B1. Originals of Exhibits B and B1 were handed over to the respondent who was to follow up the application. Respondent sent to the appellant the Certificate of Occupancy for her signature. Respondent refused to give her the Certificate of Occupancy and started developing the land. B

The respondent told quite a different story in his statement of defence. Since he did not give evidence in court, I should summarise the evidence of DW1, a builder. He told the court that the appellant told him that she was the proposed wife of the man he was working for. Appellant inspected the building. She returned to the site and effected some corrections to the building. Appellant condemned the cushion chairs made for the house. She brought a welder who did the iron work in the building. He told the court that he worked on the boys quarters and the fencing. D

DW2 in his evidence concentrated on the purchase of the land in dispute. He said that as a protocol liaison officer of the First Bank the respondent became more intimate with him, and so he introduced the appellant to him as his fiancée. He ran errands on behalf of the respondent for the appellant. The errands included sending the appellant money to settle her bills and the processing of application for the purchase of land for the appellant. He told the court that the respondent introduced the appellant as his fiancée in his house and that the respondent paid the sum of N33,458.75 as fee for the Certificate of Occupancy. F

Under cross examination, witness admitted that he is from the same town with the respondent who is like an uncle to him. He said that he settled the telephone bills of the flat respondent hired for the appellant at Maitama. He said that the appellant signed the letter of acceptance of the allocation. He did not know the person who paid the sum of N6,700.00. G

DW3, who works at the Department of Administration at the FCDA H did not know the appellant but participated in the processing of application for allocation of land. He said that the respondent paid the balance of N6,700.00 as processing fee.

The appellant, as plaintiff, had filed an action seeking for the following reliefs:

"1. A Declaration that the Plaintiff is the bona fide owner of all that Plot No. 999 Cadastral Zone B6, Mabuchi District Abuja.

B *2. A mandatory order directing the Defendant to hand over the Federal Republic of Nigeria Certificate of Occupancy No. FCT/ABU DT. 291 covering the said plot to the plaintiff forthwith.*

C *3. A perpetual injunction restraining the Defendant either by himself, his agents or privies howsoever called from further trespassing on the land.*

4. Two million naira (N2,000,000.00) as general damages for trespass on the said plot."

D *The respondent as defendant, did not accept liability. He rather counter-claimed, asking for the following reliefs:*

E *1. A DECLARATION that the defendant is the owner of the property lying situate and being at plot 999 Cadastral Zone 6 Mabuchi District, Abuja notwithstanding the fact that the plaintiff's name is on the certificate of occupancy.*

2. A DECLARATION that the defendant is the owner of the property to the plaintiff having failed, the plaintiff has not legal or equitable right to the property".

F I am in some difficulty understanding relief No. 2 of the counter claim. The appellant filed a defence to the counter claim as well as a reply to the statement of defence.

G The learned trial Judge, after hearing evidence and the submission of counsel, gave judgment in favour of the appellant in respect of claims 1, 2 and 3. He refused claim 4 on general damages for trespass. He ordered at page 49 of the Record:

H *"For the foregoing therefore, the Plaintiff's 1st, 2nd and 3rd claims against the Defendant succeed while the 4th claim of paying to her two million naira (N2,000,000.00) fails. As corollary to this, the Defendant's counter claim fail. The plaintiff is ORDERED to take possession of both the plot of land at Mabuchi and Certificate of Occupancy."*

Dissatisfied, the respondent, as appellant, appealed to the Court of Appeal. The appellant as respondent, crossed appealed. The Court of Appeal overturned the decision of the High Court. Musdapher, JCA (as he then was) delivered the leading judgment. He ordered as follows:

“In the end, I allow the appellant’s appeal and dismiss the cross-appeal. Accordingly, I grant the appellant the following prayers. It is hereby declared:

1. That the appellant is the owner of the property lying and situate and being at Plot 999 Cadastral Zone B6, Mabuchi District Abuja covered by the Certificate of Occupancy No. FCT/ABU/DT.291 notwithstanding the name of the respondent therein.

2. It is further declared that the conditions of the Gift of the said property to the plaintiff/respondent having failed the plaintiff/respondent has no legal or Equitable right to the property.

3. The decision and order for costs contained in the judgment of Kuserki J on the 20/10/1999 are set aside and in its place I enter judgement for the defendant/appellant on his counter-claim and dismiss in its entirety the respondent/plaintiff’s claim.

4. The appellant is entitled to costs which I assess in the Court below and this Court at N1,500 and N5,000 respectively”.

Dissatisfied, the appellant field an appeal in this court. Briefs were duly filed and exchanged. The appellant formulated the following issues for determination:

“1. Was the court of Appeal right to hold that the Appellant is the owner of the property lying and situated at Plot 999 Cadastral Zone B6 Mabuchi District covered by the Certificate of Occupancy No. FCT/ABU/DT 291 notwithstanding the name of the Respondent there.

2. Was the Court of Appeal right to hold that the land, Plot No. 999 Mabuchi district covered by Certificate of Occupancy No. FCT/ABU/DT 291 was allocated to the appellant by the Minister Federal Capital Territory (as a gift) pursuant to a promise of marriage to the Respondent.

3. Is the finding of the Court of Appeal that it was the ‘Appellant in furtherance of the marriage agreement acquired the land’ ... supported by evidence and the facts before the court.

4. *Whether without a claim for breach of promise of marriage the holding of the Court of Appeal that the whole transaction was based on the marriage agreement between the parties could stand.*

5. *Whether any case of resulting trust was made out by the Respondent.”*

Respondent formulated the following issues for determination;

1. *Whether the learned Justices of the Court of Appeal were right in granting the Respondent’s reliefs on his counter-claim (GROUND 1)*

2. *Whether the learned Justices of the Court of Appeal were right in holding that the property in dispute was procured by the Respondent for the Appellant in furtherance of a marriage agreement. (GROUND 2, 3, & 4).*

3. *Whether the Respondent made out a case of Resulting trust against the Appellant (GROUND 5).”*

Dealing with issues Nos. 1, 2 and 3 together, learned counsel for the appellant, Mrs. J.O., Adesina, submitted that to succeed in a claim of title to or ownership of land, the plaintiff must prove his title in one of the five ways as laid down in the case of Idundun v. Okumagba (1976) 8=10 SC 227. Enumerating the five ways in her brief, learned counsel further relied on Chukwu v. Diala (1999) 6 NWLR (Pt. 608) 674 at 681; Orubon v. Gbondu (1999) 11 NWLR (Pt. 628) 661 at 668 and Otukpo v. John (2000) 8 NWLR (Pt. 669) 507 at 525.

Relying on Exhibits C, D, and the evidence of DW4, learned counsel submitted that there was no basis for the learned trial judge to have held as he did that “*It follows that since the application for land cannot be submitted without the processing fee of N300.00 the defendant went through all the process by paying the fees and charges as they accrued till the certificate of occupancy was finally obtained*”. Learned counsel further submitted that the Court of Appeal ought not to have held that “*the finding of fact by the learned trial judge that the appellant procured the land in the name of the respondent... cannot be faulted*”. Learned counsel conceded that the respondent assisted the appellant to facilitate the processing of the land just as he did for other persons including DW2 and the appellant’s sister. She called in aid the evidence of DW3.

On the procedure for acquiring land or allocation of land in the Federal Capital Territory, learned counsel pointed out that the application form could be signed by the applicant, his attorney or agent. She relied on the evidence of PW1 and Exhibit A. Relying on Latiko v. Kutigi (1999) 3 NWLR (Pt. 596) 509 at 510; Okeke v. State (1999) 2 NWLR (Pt. 590) 246 B at 259; Tokimi v. Fagite (1999) 10 NWLR (Pt. 624) 588 at 581 and Olohunde v. Adeyoji (2000) 10 NWLR (Pt. 676) 562 at 597, learned counsel submitted that where the holding or finding of the trial judge is not supported by the evidence, the Court of Appeal is obliged to set same aside.

Attacking the conclusion of the Court of Appeal that the mere fact that a certificate is issued by the Governor does not automatically vest the leasehold created in favour of the person, learned counsel submitted that the authorities cited in support of the above are inapplicable to the case on hand. To learned counsel, the authorities relate and are applicable only to D cases where a party claims to have “*a better existing right to use and occupation of the land*” than the person who was granted the certificate of occupancy. The Minister of the Federal Capital Territory is the only authority in charge of allocation of land in Abuja and there is no iota of E evidence that he made any allocation in favour of the respondent, learned counsel maintained.

Where it has been established as in this appeal that the allocation was made directly to the appellant by a competent Authority, the presumption F raised therein is that the holder is the owner in exclusive possession of the land in respect thereof, counsel argued. She cited Osazuwa v. Ojo (1999) 13 NWLR (Pt. 634) 286 at 291 and 292; Haruna v. Ojukwu (1991) 7 NWLR (Pt. 202) 207 at 225.

It was the submission of learned counsel that the respondent did not G prove that he had a customary or other right of occupancy over the plot which had not been extinguished by the appellant neither did he prove that he acquired same and transferred title in trust to the appellant. This being so, the holding by the Court of Appeal that the respondent is the bona fide H owner of the plot and that the appellant only held the same in trust for him is erroneous, learned counsel contended. To counsel by this holding, the Court of Appeal unwittingly shifted the burden of proof of ownership of

the land on the appellant when the respondent could not adduce *prima facie* evidence in proof of his alleged ownership.

Calling in aid sections 1 and 49(1) of the Land Use Act, 1978, learned counsel said that since all land comprised in the Federal Capital Territory is vested in the Minister and not on the respondent, he cannot grant same to another person. She relied on Olohunde v. Adeyoju (2000) 10 NWLR (Pt. 67) 562 at 597; Ona v. Atenda (2000) 5 NWLR (Pt. 656) at 244 and 275; Adisa v Oyinwola (2000) 10 NWLR (Pt. 674) 116 at 164; Nkuma v. Registered Trustees of Aba (1998) 10 NWLR (Pt. 570) 514 at 524 and Sachia v. Kwande Local Government Council (1990) 5 NWLR (Pt. 152) 548 at 524.

Counsel urged the court to hold that by the operation of law the learned trial judge was right when he held that the land belonged to the appellant and that the respondent should hand over to the appellant the Certificate of Occupancy No. FCT/ABU/DT291 covering Plot No. 999 Cadastral Zone B6 Mabuchi District Abuja.

Taking Issues Nos. 4 and 5 together, learned counsel cited the definition of resulting trust in Shephard v. Cartwright (1955) AC 431 at 445 and Blacks Law Dictionary, 6th edition at page 1315. Learned counsel submitted that there are no hard and fast rules about resulting trust especially as it relates to land. The claimant must prove by hard and concrete evidence that he actually owned and/or was entitled to the land but voluntarily and deliberately opted that the Title Deed or Deed of Assignment be made in favour of another in anticipation of a marriage or whatever as the case may be, counsel submitted.

It was the submission of learned counsel that since the respondent failed to properly plead the issue of resulting trust (or any other trust) he cannot raise the issue at the address stage or on appeal, as the evidence or arguments or submissions on facts not pleaded go to no issue. He called in aid Edun v. Provost Lacoed (1998) 13 NWLR (Pt. 580) 52 Audu v. Okeke (1998) 3 NWLR (Pt. 542) 373 at 382; Rean Ltd. V Sangoyele (2000) 4 NWLR (Pt. 653) 452 at 458; Attorney-General Kwara State v. Alao (2000) 9 NWLR (Pt. 671) 84 at 100; Re Vandervell's Trusts (No. 2) (1974) 1 CH. D. 269 and Order 25 Rule 5(1) of the Federal Capital

Territory High Court (Civil Procedure) Rules 1987.

Dealing with the law of resulting trust (I suppose in the alternative) learned counsel argued that a resulting trust can only arise where the legal interest in a property is “conveyed or transferred” and it is to be inferred from the accompanying circumstances. It was not the evidence before the court in respect of Exhibit A that the legal interest given to the appellant by the Minister for FCT was or could have been at the instance of the respondent and or additional on appellant’s marriage to the respondent. Accordingly, there is no basis for the holding by the Court of Appeal that the allocation of the plot covered by the certificate of occupancy was allocated to the appellant in trust for the respondent, learned counsel contended.

Relying on sections 5(1) and 49 of the Land Use Act, counsel contended that having made an application in her name to the appropriate authority, the appellant was entitled to be allocated any parcel of land. She enumerated the procedure for the issuance of certificate of occupancy in paragraph 6.8 of the appellant’s brief. She cited once again Olohunde v. Adeyoju (supra).

It was the submission of learned counsel that since the issue is breach of promise of marriage, the failure on the part of the respondent to claim the relief in the High court and prove same is fatal to the respondent’s case. She vehemently attacked some specific findings of the Court of Appeal at pages 13 and 14 of the brief and cited the case of Ogolo v. Ogolo (1997) 7 NWLR (Pt. 512) 320 and Olabanji v. Ajiboye (1992) 1 NWLR (Pt. 218) 473. She submitted that failure of the respondent to testify before the court is fatal to his counter-claim. She urged the court to allow the appeal.

Learned counsel for the respondent Mr. O.A.R. Ogunde said on Issue No. 1 that the appellant has argued her case as if the Supreme Court was a trial court. He submitted that the appellant has not shown any special circumstances why the concurrent findings of the two courts should be set aside by this court. Since the findings of the two courts are not based on interpretation of documents or facts, this court cannot fault them, he contended. He cited Ezeonwu v. Onyechi (1996) 3 NWLR (Pt. 438) 499; Lawal v. Dawodu (1972) 8-9 SC. 83; Oladele v. Anibi (1998) 9 NWLR (Pt.

578) 320; Odeniji v. Akinpelu (1998) 7 NWLR (Pt. 557) 174 and Order 2 Rule 32 of the Supreme Court Rules.

The basis of the grant of the respondents' counter-claim is the finding that the respondent paid all the fees for the allocation of the plot and signed the application form and that he did this in furtherance of a marriage agreement between the appellant and the respondent, learned counsel claimed. He contended that the respondent's claim is that the appellant was a resulting trustee and not an absolute owner. A resulting trustee is a latent arrangement which becomes patent, once the object of the trust fails. Therefore the cases of Osazuwa v. Ojo (supra); Haruna v Ojukwu (supra) and Olohunde v. Adeyoju (supra) are totally irrelevant to this appeal and the issues raised therein, learned counsel argued.

Taking Issue No. 2, learned counsel pointed out that the respondent's action is not for breach of promise of marriage but for the recovery of land. The respondent according to counsel, was not seeking to recover damages for breach of marriage promise and so there was no need for him to testify. He cited Adebayo v. Ighodalo (1997) 11 NWLR (Pt. 530) 694.

On Issue No. 3, learned counsel cited what Lord Denning said in the case of Re Vandervell's Trusts (No.2) (1974) 1 Ch.D. 209 and submitted that a resulting trust is not a material fact but a legal result, an inference to be deduced from facts pleaded. If on the facts, the respondent abandoned resulting trust and raises, for example implied or charitable trust, it is quite open to him provided this did not entail any difference in facts but only a difference in stating the legal consequences, learned counsel argued. Citing Slaw v. Slaw (1954) 2 QB 429 at 441, learned counsel submitted that as the respondent pleaded all the facts, which a resulting trust may be inferred, this court can deal with the issue.

Arguing that the doctrine of resulting trust was properly applied in the case by the lower court, counsel cited In Re: Howes Vol. 21 Times Law Reports 501; Standing v. Dowering (1885) 31 Ch.D. 282; Vandervall v. I.R.C. (1976) AC 291 and Muniru Shekete v. Fitz-James without the citation. He urged the court to dismiss the appeal.

Mrs. Adesina, in her reply brief, submitted on Issue No. 1 of the respondent's brief that since the appellant obtained leave of the Court of

Appeal to appeal to this court on grounds of fact and mixed law and facts, the legal effect is that all the facts on record are completely under the appellate juridical authority of this court to rehear the case under Order 8 Rule 13(1) of the Supreme Court Rules 1990. She cited Kala v. Potiskum (1998) 3 NWLR (Pt. 540)1 at 11. B

It was the submission of counsel that concurrent findings of the trial court and the Court of Appeal may be set aside by the Supreme Court where they are shown to be erroneous, unfounded, or unsupportable. She cited Searby Jernstoberi M.R. A/S v. Olaogun Enterprises Ltd. (1999) 14 NWLR (Pt. 637) 128 at 143. Showing special or exceptional circumstance to enable the Supreme Court set aside concurrent findings of the High Court and the Court of Appeal does not mean much more than showing that the conclusion of the two lower courts on an issue of fact was wrong in view of the facts on record, counsel contended. She cited Akpan v. Umoh (1999) NWLR (Pt. 627) 349 at 365-366. She enumerated in paragraph 1.8 pages 3 and 4 of the reply brief what she regarded as findings which are not supported by evidence. C D

Let me first take the issue on the failure of the respondent to give evidence in court. **Learned counsel for the appellant submitted that the failure on the part of the respondent to testify before the High Court in respect of his counter-claim is fatal to his case. With respect, I do not agree with her. I know of no procedural law in our justice system which provides that a party must give evidence at the trial. The burden of proof merely requires the party alleging or asserting a fact to prove the fact. And such a party can do so by calling witness or witnesses to prove his allegation or assertion.** E F

Accordingly, our adjectival law and the rules of court do not foist on a party the duty to give evidence. While it is desirable that he gives evidence, there are situations where, from the facts of the case, some other person is in a better position to give evidence because that person participated in the particular matter and did it and saw it all. There could also be a situation where some other person, though did not participate in the matter, is in a better position to give evidence because he knows the matter much more G H

than the party. However, where the only competent witness is the party in the case in the sense that he was directly involved in the transaction, and no other person, he then stands the risk of exposing the evidence of his witness or witnesses as a bundle of hearsay.

B In the instant appeal, the respondent like the appellant, was the centre or midst of the whole affair. He saw it all and he did it all too. But he asked three other witnesses to give evidence on his behalf. One is DW1, the second is DW2, the third is DW3. The respondent will stand or fall by the evidence of his three witnesses. This is merely saying the obvious.
C I shall take the evidence at the appropriate place. Let me not prejudge their evidence.

Learned counsel for the appellant attacked the judgement of the trial judge given in favour of her client. She did so freely at pages 7 and 8 of
D the brief and also in the reply brief. Let me read paragraph 4.5 of the appellant's brief to substantiate the point I am making:

*"It is therefore respectfully submitted that there was no basis for the learned trial judge to have held as he did that it follows that since the
E application for land cannot be submitted without the processing fee of N300.00 the defendant went through all the process by paying the fees and charges as they accrued till the Certificate of Occupancy was finally obtained.*

F **I do not think the above submission is available to counsel. A**
**party who has judgment in his favour and who has not cross-appealed or who has not taken out a respondent's notice is not entitled to raise any adverse issue arising from the judgment. The only way to show grievance of a judgment is by way of appeal and in certain cases by
G way of a respondent's notice. In view of the fact that the appellant had judgment in the High Court, all that she should have done, if not satisfied with the statement of the trial judge on the issue of payment of the processing fee of N300.00 by the respondent was to
H commence a cross-appeal. In the absence of that, the appellant has to accept the decision of the High Court with all its sweetness and bitterness cum onere. And what is more, the judgment before this court on appeal is the judgment of the Court of appeal and not the**

judgment of the High Court. In the circumstances, I shall discountenance all the negative issues raised against the judgment of the learned trial judge by counsel for the appellant.

The fulcrum of this appeal is the contention of the respondent that he did all he did for the appellant because there was an agreement between the appellant and himself to marry. Let me go a bit into the law of contract or agreement of parties to marry and see whether it applies to the appeal in favour of the respondent, who has the burden to prove the existence of the agreement to marry.

In view of the fact that the case of the respondent is breach of agreement on the part of the appellant to marry him, I will take here what constitutes breach of agreement to marry. Two elements are necessary to constitute a breach of agreement or promise of marriage. First, the party jilted must prove to the satisfaction of the court that there was in fact a promise of marriage under the Matrimonial Causes Act, 1990, or under Islamic Law or under Customary Law, on the part of the other sex. Second, the party renegeing has really, and as a matter of fact, failed or refused to keep to the agreement of marriage.

Marriage is regarded as a very sacred institution both in our jurisprudence and in our sociology. Accordingly an agreement to enter into a marriage should leave nobody in doubt as to the real intention of the parties to enter into a marriage. A mere convivial or romantic relationship without more is not enough for a court to found an agreement to marry.

While the law may at times require that an agreement to marry should be in writing, the law will be prepared to hold, in appropriate cases, that the parties intended to marry in the absence of any written agreement. In this respect, the court will take into consideration the institution of marriage as a trade in the relevant society and how persons generally engage themselves in agreement of marriage. In this regard, the law will be more stringent in agreement to enter into marriage under the Matrimonial Causes Act and to some extent under Islamic Law than agreement to enter into marriage under customary law. I say this because while the first

two types of marriages have settled principles and formalities of marriage, the third one is essentially transient, depending upon the custom, cultures and ethos of a given society.

In the light of the above, there is need for me to find out from the Record the nature or type of marriage the appellant and the respondent agreed to undertake, if there was an agreement at all. DW1, a builder, who at the material time was handling three buildings for the respondent, said in his evidence in-chief at page 29 of the Record:

“The first day I met the plaintiff she came to my site at Minister Hill(sic). I asked her who she is because I was thinking that she is an architect. She told me that she is the proposed wife of the man I was working for at Minister Hill. I received her and took her round the building. She inspected everything. I went to him and told him one fine lady came to my site and told me that he is her proposed husband. He asked me how I liked the girl. I told him that she is fine and charming. He told me that he will build the house he is planning for her. The house is at Mabuchi which I am now constructing. The lady use (sic) to come to the site at Mabuchi to effect some corrections. She come (sic) there more than 7 or 8 times”.

DW2, who called himself a banker because he works at the First Bank of Nigeria Plc said at page 30 of the Record:

“I know the plaintiff and I know the defendant. The defendant was the Chairman of our Bank... I know the relationship between the plaintiff and the defendant as far back as 1993 when I was transferred from Kano to Abuja. I was the Protocol and Liaison officer of the Bank... Around June 1993 or July 1993 he introduced the plaintiff to me as his fiancée. As from that time the defendant developed trust in me. He was sending me to her with money to give her or to settle her bills.”

DW3, an employee of the FCDA in his evidence said he did not know the appellant. And so, I am left with the evidence of DW1 and DW2. None of the witnesses gave evidence as to the nature or type of marriage the appellant and the respondent agreed to enter into. And this is material for the purposes of determining the issue of breach. All that DW1 said is that the appellant told him that the respondent is her proposed husband.

DW2 said that the respondent introduced the appellant as his fiancée.

And that takes me to the bigger issue and it is an agreement for marriage between the appellant and the respondent, an agreement which the respondent said made him procure the landed property under dispute. Did any of the witnesses give such evidence? I must fall back once again on the evidence of DW1 and DW2. DW1 said in his evidence in-chief that the appellant told him that she “is the proposed wife of the man I was working for in Minister Hill” and that the respondent told him that he “will build the house he is planning for her”. Of course, he was specific and it is the house at Mabuchi. The only evidence of DW2 as it affects the appellant is that the respondent introduced the appellant to him as his fiancée. I sound repetitive and prolix.

I could not place my hand on any evidence by the witnesses that the property in dispute was developed because the appellant and the respondent agreed to marry. If anything, appellant said in her evidence that there was no issue of marriage between them. Let me read part of her evidence even if at the expense of prolixity.

“Issue of marriage had not been discussed though because on several occasions I raise it he will say he had problem as to his sperm count. The issue of marriage therefore did not arise. He went on telling me that he would encourage me to get a husband and then he would sponsor the marriage. I went on insisting that it was him I want to marry. He went on seeing me more often. I told my mother who cautioned him to allow me some space”.

Under cross-examination, appellant said:

“I met defendant in January, 1993 in my younger sister’s boy friend’s house. He there and then sought me as his girlfriend. I refused on that day. But we went on as father/daughter relationship. He was my guardian. Later I agreed to be his girl friend. The defendant refused to go and see my parents on the gifts and offers.

In view of the fact that the respondent did not give evidence to contradict the above evidence, particularly in respect of his refusal to go and see the parents of the appellant, it is difficult to come to the conclusion that there was really an agreement to marry;

not to talk of such an agreement based on the putting up of the property in dispute. I must also say that not even DW1 and DW2 gave evidence in contradiction of the evidence of the appellant that the respondent failed to see her parents in respect of a possible matrimony. The evidence of the appellant, being uncontradicted is accepted by me. See National Insurance Corp. of Nigeria v. Power and Ind. Eng. Co. Ltd. (1986) 1 NWLR (Pt. 14) 1; Nwede v. State (1985) 3 NWLR (Pt. 13) 444; Eze v. State (1985) 3 NWLR (Pt. 13) 429; Kure v. State (1988) 1 NWLR (Pt. 71) 404; Odebunmi v. Abdullahi (1997) 2 NWLR (Pt. 489) 529.

Let me examine the evidence in respect of the application for land which resulted in the issuance of the certificate of occupancy. PW1, a staff of the FCDA in the lands department said in evidence in-chief:

"I know the procedure when one wants to apply for land allocation under the FCDA/MFCT. The applicant should obtain an application form. There is an application form for land in Exhibit A in the name of Chinyere the plaintiff. There was an approval on page 12 of EXH A for the allocation of plot M 999 at Mabuchi. Cert.. of Occupancy was then issued as shown on page 34 the forwarding letter of Cert. of Occupancy in the name of the plaintiff. There is evidence of collection of same on p. 35. The allottee of the plot of land is the plaintiff."

The appellant, as PW2, said in her evidence in-chief:

File No. DT. 291 belongs to me. It concerns my application for land from FCDA. I applied for land in August 1992... I paid N300 the 1st application for 1993, 7th August. My signature is not on the portion, meant for signature of applicant. It is the defendant's signature and his name for CAM Ezeana underneath his name. When the new Minister, General Useni came, he introduced additional N6,700 as additional fee. I made the payment... I was issued a receipt for the N300 and N6,700. There was a Cert. of Occupancy issued in respect of plot 999. The defendant told my sister about it. I have a photocopy of the same which he sent to me through my sister. I requested for the original certificate of occupancy from him. He refused to give me. I later found out that he was trying to change the name on the Certificate of Occupancy to his."

DW3, in his evidence in-chief, said:

"I know (sic) the defendant in 1990 when a submission was made of an application form in the name of the plaintiff with N320. I assigned one of my officers to effect the payment... After collecting the Certificate of Occupancy, I took it to the Defendant though not in his name, he was the person who pursued it and the M.A. authorised me to take it to him." B

It is clear from the above evidence that the Certificate of Occupancy was not issued in the name of the respondent. The evidence of PW1 and PW2 is clear that the Certificate of Occupancy was issued in the name of the appellant. Although the evidence of DW3 did not so indicate, that could be inferred from his evidence. What is clear in his evidence is that the Certificate of Occupancy was not issued in the name of the respondent. All he did was to send the certificate to him. C

What is the legal basis of a certificate of occupancy? A holder of a certificate of occupancy holds the title to the property and subject only to the conditions stipulated in the Land Use Act. A certificate of occupancy creates a term of years absolute or a lease for a number of years stated therein. See Chiroma v. Suwa (1986) 1 NWLR (Pt. 19) 751. The greatest legal estate that can now subsist under the Land Use Act is a term of years. The grant of a term of years under a certificate of occupancy is in substance a lease. See Dr. Otti v. Attorney-General of Plateau State (1985) HCCLR 787. D E

In other words, a certificate of occupancy properly issued by a competent authority raises the presumption that the holder is the owner in exclusive possession of the land in respect thereof. Such a certificate also raises the presumption that at the time it was issued there was not in existence a customary owner whose title has not been revoked. The presumption is however rebuttable because if it is proved by evidence that another person had better title to the land before the issuance of the certificate of occupancy then the court can revoke it. See Osazuwa v. Oji (1999) 13 NWLR (Pt. 634) 286. See also H Atta v. Ezeanah (2000) 11 NWLR (Pt. 678) 363; Shogo v. Adebayo (2000) 14 NWLR (Pt. 686) 121. F G H

The above position does not apply in this appeal as the case of the

respondent is not one of better title but rather one of ownership of the property on the ground that it was procured by the respondent for a promise of marriage. A certificate of occupancy properly issued under section 9 of the Land Use Act ought to be a reflection and an assurance
B that the grantee, in the context of this appeal, the appellant has to be in occupation of the land. See Eke v. Eluwa (2000) 14 NWLR (Pt. 88) 560.

And that takes me to the issue of resulting trust. Did the respondent plead resulting trust as required by the rules of the court? Order 25 Rule
C 5(1) of the Federal Capital Territory High Court (Civil Procedure) Rules 1987 provides;

*“In all cases in which the party pleadings on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which the particulars (with dates and items if necessary) shall be
D stated in the pleadings”.*

In the respondent’s brief, counsel cited the following passage by Lord Denning in Re Vandervell’s Trusts (No. 2) (supra);

*“Mr. Balcanbe for the executors stressed that the point taken by Mr.
E Mills was not covered by the pleadings. He said time and again; This way of putting the case was not pleaded. No such trust was pleaded.” And so forth. The more he argued, the more technical he became. I began to think we were back in the bad old days before the Common Law Procedure Acts
F 1852 and 1854, when pleadings had to state the legal result; and a case could be lost by the omission of a single averment. See Bullen and Leake’s precedent of pleadings, 3rd ed. (1868), P. 147. All that has been long swept away. It is sufficient for the pleader to state the material facts. He need not state the legal result. If, for convenience, he does so, he is not
G bound by, or limited to, what he has stated. He can present, in argument any legal consequence of which the facts permit. The pleadings in this case contained all material facts. It does not appear that Mr. Mills put the case before the judge; but this does not entail any difference in the facts only
H a difference in stating the legal consequences. So it was quite open to him.”*

It is clear from the wordings of Order 25 Rule 5(1) of the Rules of Court that the breach of trust shall be pleaded. There is no such

pleading in the statement of defence and that is prejudicial to the case of the respondent. It is trite law that rules of court must be followed and obeyed by the parties and the courts. See Solanke v. Somefun (1974) 1 SC 41; Dr. Aina v. Miss Aina (1986) 2 NWLR (Pt. 22) 316; Ibodo v. Enarofia (1980) 5-7 SC 42; Olusesi v. Oyelusi (1986) 3 NWLR (Pt. 31) 634; John v. Black (1988) 1 NWLR (Pt. 72) 648. B

I do not think the passage cited by learned counsel above is helpful to the case of the respondent. Lord Denning was careful in distinguishing between the pleading of the material facts as opposed to the legal result or legal consequence. I do not see where the respondent pleaded relevant facts in relation to the doctrine of resulting trust. C

It is in this respect, I will briefly look at the law of resulting trust to see whether the respondent pleaded enough facts to admit the law. One other expression for resulting trust is implied trust. An implied trust is one founded upon the unexpressed but presumed intention of the settlor. Such trusts are also referred to as “resulting” because the beneficial interest in the property comes back or result to the person who provided the property or to his estate. D

Professor G.W. Keeton, in his book titled, The Law of Trusts, 8th edition (1963) gave the following example of implied and resulting trust at page 143: E

“The best example of a trust implied by law is where property is purchased by A in the name of B, that is to say, A supplies the purchase money, and B takes the conveyance. Here, in the absence of any explanation, facts, such as an intention to give the property to B, Equity presumes that A intended B to hold the property in trust for him.” F
See also Rochefoucauld v. Boustead (1897) 1 Ch. 196; Dyer v. Dyer (1788) 2 COX. 92. G

Is there any evidence before this court that the respondent purchased the property in dispute for the appellant? Is there any evidence that the appellant holds the property in dispute in trust for the respondent? I do not see any such evidence. None of the three witnesses for the respondent gave such evidence. I do not see any H

relation of a settlor and a beneficiary in the relationship between the respondent and the appellant respectively.

Assuming without conceding that, the resulting trust was properly pleaded, the law could not have availed the respondent particularly in the absence of proof of an agreement of marriage between the appellant and the respondent.

Let me take the last issue and it is what learned counsel for the appellant regarded as concurrent findings of the two courts below. The learned trial judge said at page 46 of the Record:

“The evidence of defence witness 2 who had been a go-between the Plaintiff and the Defendant is clear and unambiguous, in that pursuant to marriage agreement, he the defendant witness 2 was running errand between them. He was building a house and shop for her, rented a flat for her in Maitama, and incorporated 2 companies for her as his financee(sic). Therefore, factually the Defendant applied for and secured a plot of land for the plaintiff at Mabuchi, there was marriage agreement between the plaintiff and the defendant. These facts to my mind, have been proved on the balance of probability.”

The Court of Appeal, in accepting the above finding of the learned trial Judge said at page 139 of the Record:

“Now, the learned trial Judge had held and rightly in my view, that the appellant had acquired the leasehold under the Right of Occupancy at his expense in the name of the respondent in furtherance of a marriage contract to be fully concluded after erecting buildings thereon and after the marriage... Evidence was abundant that the respondent secretly married another person. Thus, there was a total failure of consideration on the part of the respondent.”

The above are the concurrent findings of the two courts which learned counsel has referred to in his brief. **I still maintain my position that there is no evidence before the learned trial Judge that the property was purchased by the respondent in furtherance of an agreement or contract to marry. Unfortunately, neither the learned trial Judge nor the Court of Appeal specifically mentioned such evidence.**

I do not see such evidence given by DW2. Perhaps I should return to it once more. All that the witness said is that the respondent introduced the appellant to him as his fiancée. He did not say that the property was procured because there was an agreement between the appellant and the respondent to marry. The evidence of the witness is at pages 30 and 31. Although the meaning of fiancée is the person one is going to marry or the person to whom one is engaged as one can say “Jimoke” is my fiancée” or “Aisha is my fiancée”, that cannot be interpreted to mean that any premarital gift is predicated on an agreement or contract to marry. An agreement or contract to marry is a bilateral affair between a man and a woman and both parties must be ad idem in respect of any collateral transaction relating to the intended marriage.

It seems to me that the learned trial Judge was carried away by the quantity, quality and magnificence of the gifts in coming to conclusion that there was an agreement to marry. Is that the law? No. Premarital gifts, in order to qualify as gifts in furtherance of an agreement to marry, must be clearly, cleanly and unequivocally traceable to an agreement on the part of the parties to marry. Where gifts part from any of the parties to the other on love and not on the business of agreement to marry, with all the ingredients of offer, acceptance, consideration, intention to create legal relation and capacity to contract the agreement, the court must not come to the conclusion that the parties agreed to get married hence the gifts. That is not talking law.

The learned trial judge only relied on the evidence of DW2, which I have said, did not vindicate his conclusion. Unfortunately, he did not consider the evidence of the appellant, PW2. Let me repeat what she said, the third time for ease of reference:

“Issue of marriage had not been discussed though because on several occasions I raised it, he would say he had problem as to his sperm count. The issue of marriage therefore did not arise. He went on telling me that he would encourage me to get a husband and that he would sponsor the marriage.”

Where there are two conflicting evidence it is incumbent on the trial Judge to consider them by placing them on an imaginary scale before preferring one to the other. It does not appear that the learned Judge did that in this case. He merely relied on the evidence of DW2 and came to the conclusion that there was an agreement of marriage between the parties.

It is trite law that where the findings of trial court and indeed the concurrent findings of the Judge and the Court of Appeal are perverse, this court can interfere and give the correct findings as the evidence in the Record show. See Ajeigbe v. Odedina (1988) 1 NWLR (Pt. 72) 584; Okonkwo v. Okolo (1988) 2 NWLR (Pt. 79) 632; Ibhafidon v. Igbinosun (2001) 8 NWLR (Pt. 716) 653. In view of the fact that the finding of the learned trial Judge which was acceptable by Court of Appeal on the issue of agreement to marry is not borne out from the Record, I regard it as perverse and I accordingly interfere. The result of my interference is to reject that finding.

In sum, this appeal succeeds and it is allowed. The judgment of the Court of Appeal is hereby set aside. I restore the judgment of the trial judge. I order that the respondent pays the appellant the cost of N10,000.00.

ONUJSC

I have been privileged to read before now the judgment of my learned brother, Tobi, JSC just read. I agree with him that the appeal is meritorious and ought therefore to succeed.

A few comments of mine, I think, will do to throw more light on the matter. In the High Court sitting in Abuja the appellant as Plaintiff claimed as follows:

"1. A Declaration that the Plaintiff is the bona fide owner of all that Plot No. 999. Cadastral Zone B6. Mabushi district, Abuja.

2. A mandatory order directing the Defendant to handover the Federal Republic of Nigeria Certificate of Occupancy No. FCT/ABU/DT. H 291 covering the said Plot to the Plaintiff forthwith.

3. A perpetual injunction restraining the Defendant either by himself, his agents or privies however called from further trespassing on the land.

4. *Two million Naira (N2,000,000.00) as General Damages for trespass on the said land.*”

After a full hearing the learned trial judge in his considered judgment delivered on the 20th October, 1999 concluded as follows:

1. *From the foregoing therefore, the Plaintiff's 1st 2nd and 3rd claims against the defendant succeed while her 4th claim of paying to her two million Naira fails.*

2. *As a corollary to this the Defendant's counterclaim fails. The Plaintiff is ordered to take possession of both the plot of land at Mabushi and the Certificate of Occupancy.*”

Both the Respondent as Appellant and Appellant as Respondent were aggrieved by the trial court's said decision and this culminated in an appeal and cross-appeal by each, to the Court of appeal sitting in Abuja (hereinafter referred to as the Court below).

The Court below in a unanimous judgment held as follows:

“In my view the appellant had adequately pleaded resulting trust and the learned trial judge actually found the facts were established. What he failed to do was to apply the legal consequences. It is now settled law that the Court of appeal may and shall generally exercise wide powers under s. 16 of the Court of Appeal Act and deal with the matter as though it is the court of trial. I accordingly adjudge that the appellant has proved his counterclaim and as such the respondent was not entitled to any of the reliefs she claimed.

Although it is desirable to deal with all the issue formulated in an appeal, where one issue encompasses and affects all the other issues and of necessity disposes the appeal, it should not be necessary to deal with the other incidental issues. The fundamental question is, was the respondent entitled to declaration of title to the plot in question under the accepted facts of this case favouring the appellant? The answer is clearly no, had the learned trial judge applied the law to the facts he would surely have arrived at the inevitable decision that the appellant is the beneficial owner of the leasehold created by the grant of the Right of Occupancy. He had the equitable estate and was in possession of the land and the Certificate of Occupancy. The respondent was merely a trustee. I accordingly refrain

to deal with the incidental issues raised in the appeal as they would serve no purpose”.

In consequence, the court below (Per Musdapher, JCA as he then was) concluded by declaring the following prayers in the Appellant’s favour.

B “1. That the appellant is the owner of the property lying and situate and being at Plot 999 Cadastral Zone B6, Mabushi district Abuja covered by the Certificate of Occupancy No. FCT/ABU/DT. 291 notwithstanding the name of the respondent therein.

C 2. It is further declared that the conditions of the gift of the said property to the plaintiff/respondent having failed the plaintiff/respondent has no legal or equitable right to the property.

D 3. The decision and order for costs contained in the judgement of Kusherki J. on the 20/10/1999 are set aside and in its place I enter judgement for the defendant/appellant on his counter claim and dismiss in its entirety the respondent/plaintiff’s claims.

4. The appellant is entitled to costs which I assess in the Court below and this Court at N1,500 and N5,000 respectively.”

E Dissatisfied with the decision of the Court below, the Plaintiff/Respondent/Appellant has appealed to this court on five grounds. The five issues which the Appellant submits arise for our determination from these grounds which I adopt herein as opposed to the three formulated by the Respondent complain as follows:

F “1. Was the Court of Appeal right to hold “that the Appellant is the owner of the property lying and situated at Plot 999 Cadastral Zone B6, Mabushi district covered by the Certificate of Occupancy No. FCT/ABU/DT. 291 notwithstanding the name of the respondent there.’

G 2. Was the Court of appeal right to hold that the land, plot No. 999 Mabushi district covered by Certificate of Occupancy No. FCT/ABU/DT. 291 allocated to the Appellant by the Minister Federal Capital Territory (as a gift) pursuant to a promise of marriage to the Respondent.

H 3. Is the finding of the Court of Appeal that it was “the Appellant in furtherance of the marriage agreement acquired the land...” supported by evidence and the facts before the court.

4. Whether without a claim for breach of promise of marriage the

holding of the Court of appeal that “the whole transaction was based on the marriage agreement between the parties” could stand.

5. *Whether any case of resulting trust was made out by the Respondent”.*

I propose to consider issues 1, 2 and 3 together and then issues 4 and 5 together, as the Appellant has treated them in this appeal.

ISSUES 1, 2 AND 3

In a civil claim of title to or ownership of land, for a party to succeed, he must prove his title in one of the five ways laid down in this Court’s decision of Idundun v. Okumagba (1976) 9-10 S. C. 227 followed by a long line of other decided authorities to the following effect:

1. Proof by traditional evidence
2. Proof by production of documents of title duly authenticated to prove title.
3. Proof by acts of ownership extending over a sufficient length of time, numerous and positive as to warrant the inference that the person is the true owner. Vide Ekpo v Ita 11 NLR 68.
4. Proof by acts of long possession and
5. Proof of possession of connected or adjacent land in circumstances probable that the owner of such connected or adjacent land would in addition be the owner of the land in dispute.

See also Chukwu v Diala (1999) 6 NWLR (Part 608) 674 at 681. Orubon v. Gbondu (1999) 11 NWLR (Part 661) 668 and Otukpo v. John (2000) 8 NWLR (Part 669) 507 at 525 and Okechukwu v. Okafor (1961 1 All NLR 398. The case of the Appellant in the two courts below was that she obtained and completed Application Form for allocation of land to the Honourable Minister of FCT in August, 1992. That after filling and completing the Application Form in her own hand writing, she made the initial deposit of N300.00k and sometime later made a further payment of N6,700 through a Habib Bank Draft issued from her Account after duly submitting her passport photographs. Thereafter, she asserted that the said plot 999 Mabushi District was allocated to her. The certified true copy of her file at the FCDA No. FCT/LA/92/DT. 291 was received in evidence as Exhibit A while the Certificate of occupancy contained therein was

received in evidence as Exhibit D. Moreover, Conveyance of Approval offer of terms of Grant of Right of Occupancy was duly signed for and accepted by the Appellant. Before the issuance of Exhibit D there was “Conveyance of approval and offer of terms of Grant of Right of Occupancy” which was equally issued to the Appellant and same was also tendered and admitted in evidence as Exhibit C. Be it noted that the acceptance of Exhibit C was duly signed by the Appellant. There was no evidence on record that the Respondent was the one who completed the land Application Forms, paid the initial application fees of N300 and equally the processing fees of N6,700.00.

DW2 in his evidence under cross-examination said “I do not know who made the payment of N6,700 to FCDA but made a refund of N6,700.” This witness had on this same issue testified: “He said that he would get in touch with her (meaning Appellant) to pay up the difference”.

From the foregoing piece of evidence it goes without saying that it was the Appellant who made the payment of N6,700 in respect of this land. It is therefore my firm view that there was no basis for the learned trial Judge to have held as he did that “it follows that since the application for land cannot be submitted without the processing fee of N300.00 the defendant went through all the process by paying the fees and charges as they accrued till the Certificate of Occupancy was finally obtained”. It is for this reason that I share the Appellant’s view that the court below, with utmost due respect, ought not to have held that “the finding of fact by the learned trial judge that the Appellant procured the land in the name of the Respondent..... cannot be faulted”.

It is indisputable that the Respondent assisted the Appellant to facilitate the processing of the plot acquisition (just as he did for other persons including DW2 and Appellant’s sister). This, in the words of D.W.3, is normal since important personalities in this country are known sometimes to help other people to process their Certificate of Occupancy vide the evidence of PW1 to the effect that the applicant must obtain and complete an application Form. The form, it is stressed, must be signed by the Applicant, his attorney or agent, and has to be duly processed up to the stage of approval by the Minister after which a Certificate of Occupancy is then issued in

the name of the Applicant. Extant on the record is the fact that appellant complied with the requirements for land allocation. Even the forwarding letter of Exhibit D. was in the name of the Appellant. There is no iota of evidence to indicate that the Application or the final allocation of land was all done pursuant to the purported marriage agreement as held by the Court B below. Where the holding or finding of a lower court, as in the instant case, is not supported by evidence, the Appeal Court is obliged to set same aside. See Latiko v. Kutigi (1999) 3 NWLR (Part 596) 509 at 510; Okeke v. State (1999) 2 NWLR (Part 590) 246 at 259; Tokimi v. Fagite (1999) 10 NWLR C (Part 624) 588 at 591 and Olohunde v. Adeyoju 2000 10 NWLR (Part 676) 562 at 597 following Woluchem v. Gudi (1981) 5 SC. 291 at 326 and Amida v. Oshoboja (1984) 7 S.C. 68 at 89 albeit that I hold all these cases distinguishable from the one in hand. In the result, I find it difficult to agree D with the court below when they held that:

“the mere fact a certificate of occupancy is issued by the Governor does not automatically vest the leasehold thereby created in favour of the person named. Certificate of Occupancy is only a prima face evidence of the Right of Occupancy in favour of the person as allottee”. E

No doubt, the authorities cited in support of the above holding are inapplicable to the case in hand in that these line of authorities relate and are applicable only to cases where a party claims to “have a better existing right to the use and occupation of the land” than the person who was F granted the Certificate of Occupancy. This definitely was not the case here since there is no doubting the fact that the Minister of the Federal Capital Territory is the only authority in charge of allocation of land in Abuja. Be that as it may, there is no iota of evidence proffered before the trial court that he made any allocation in favour of the Respondent. If he G had, then obviously. Exhibit D would be primary or even absolute evidence of title. Moreover, throughout the trial, there was no fact proffered to prove nor indeed any suggestion, that the Respondent had any official or H other authority to direct, command or instruct the MFCT to allocate a plot or issue a Certificate of Occupancy at his (Respondent’s instance) to the Appellant or any person. Where it has been established as in the present case, that the allocation was made directly to the Appellant by a competent

authority the presumption raised therein is that the holder is the owner in exclusive possession of the land in respect thereof. See Okechukwu v. Okafor (supra); Mogaji v. Cadbury Ltd (1972) 2 S.C. 97, Ladipo v. Ajani (1997) 8 NWLR (Part 516) 356 Ekpan v. Uyo & Another (1986) 3 NWLR B (Part 26) 63.

With due respect, the Respondent had not proved that he had a customary or other right of occupancy over plot 999 Cadastral Zone B6 Mabushi District, Abuja which has neither been extinguished nor titled proved to have been acquired or transferred in trust to Appellant. This being so, I am of the firm view that the holding of the Court below that the respondent is the bona fide owner of the said plot and that the Appellant only held same in trust for him is palpably erroneous and cannot be allowed to stand. By virtue of Section 1 read together with Section 49(1) of the D Land Use Act, 1978, all the land comprised in the FCT is vested in the Minister for the Federal Capital Territory and not the Respondent who cannot grant to another what he has not vide. Nemo dat quod non habet. See Olohunde v. Adeyoju (2000) 10 NWLR (Part 67) Page 562 at 597 E paragraph A – C; Ona v. Atenda (2000) 5 NWLR (part 656) 244 at 274. Adisa v. Oyinwola (2000) 10 NWLR (Part 674) 116 at 164 and Helen Nkume v. Regd Trustees of Aba (1998) 10 NWLR (Part 570) 514 at 524. See also the Court of Appeal decision in Sachia v. Kwande L.G.C (1990) F 5 NWLR (Part 152) 548 at 558 where Adio, JCA (of blessed memory) while elucidating on the maxim of application held, inter alia, that a person cannot give what he does not have or possess. The legal implication was that the Land Allocation Committee having earlier allocated the plot of land in question to another person, there was nothing which the committee G could legally and properly allocate to the Appellant, in the case in hand, the Respondent.

In consequence, I hold that by operation of law the learned trial Judge was right when he found that the land belonged to the Appellant and that the H respondent should hand it (Exhibit D) over to the Appellant.

ISSUES 4 AND 5

For the definition of what constitutes resulting trust see the case of Shephard v. Cartwright (1995) A.C. 431 at 445. See also Blacks Law

Dictionary, 6th edition at page 1315. As clearly illustrated in the leading judgment of my learned brother, Tobi JSC. There are no hard and fast rules about what amounts to resulting trust especially as it relates to land. Where it arises, the claimant of the piece of land must prove by hard and concrete evidence that he actually owned and/or was entitled to the land but voluntarily or involuntarily opted that the Title Deed or Deed of Assignment be made in favour of another in anticipation of a marriage or whatever the case may be. Where a party as in the instant case, fails to properly plead the issue of resulting trust (or any other trust) he cannot raise the issue at the address stage or on appeal as the evidence or arguments or submissions on facts not hitherto pleaded, go to no issue. See Okafor & Ors. V Oketiakpe (1973) 1 NMLR 173; Okulaja v. Ogundeji (1969) 2 All NLR 173; Okagbue v. Romaine (1982) 5 S.C. 133 at 154; Edun v. Provost Lacoed (1998) 13 NWLR (Part 580) 52 and Attorney General of Kwara State v. Alao (2000) 9 NWLR (Part 671) 84 at 100; Re Vandervells Trusts (no. 2) (1974) 1 CH.D. 269 and Order 25 Rule 5(1) of the Federal Capital Territory High Court (Civil Procedure) Rules 1987.

In the case in hand, where an agreement of marriage between the Appellant and the Respondent was neither pleaded nor can be inferred, a resulting trust is out of the question and I so hold.

As in my view the consideration of the above issues taken separately and together sufficiently dispose of this appeal, for the reasons I have herein - before given and the fuller ones proffered in the judgment of my learned brother Tobi, JSC - a preview of which I had been privileged to have before now, I too allow the appeal. I make similar consequential orders inclusive of those as to costs therein contained.

IGUHJSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, tobi, J.S.C. and I entirely agree, for reasons contained therein, that there is merit in this appeal and that the same ought to be allowed.

Accordingly, this appeal succeeds and it is hereby allowed. The judgment of the court below is set aside and that of the trial court is hereby

restored. I subscribe to the order for costs contained in the leading judgment.

KALGO JSC

B I have read before now the judgment of my learned brother Niki Tobi JSC just delivered in this appeal. I agree with him that there is merit in this appeal and it ought therefore to be allowed.

C By way of emphasis let me add a few words of mine to the reasoning and conclusions of Tobi JSC in the judgment aforesaid. The counter-claim of the respondent at the trial was not substantiated on the breach of promise of marriage which was the main focus of his claim. In his statement of defence and counter-claim, the respondent averred thus:-

D *“1. The defendant denies paragraph 1 of the statement of claim and puts the plaintiff to the strict proof thereof.*

2. The defendant admits paragraph 2 of statement of claim

3. The defendant avers that he met the plaintiff sometime in 1991 and both of them agreed to get married.

E *4. Based on this marriage contract, the defendant sponsored the plaintiff for further studies in England paid all the School fees and supported the plaintiff throughout her stay until she returned in late 1997. The defendant will at the time of the trial rely on payment proofs and other documents.*

F *5. That the defendant further avers that it was based on this promise of marriage that the defendant applied for the property in dispute. The defendant will at the trial rely on the application form and all payment cheques concerning the property.*

G *6. The defendant denies paragraph 3 of the statement of claim and also states that the plaintiff was not even in Nigeria when the defendant applied for allocation of the plot.*

H *7. The defendant denies paragraph 5 of the statement of claim, and states that although he submitted the building plans to the knowledge of the plaintiff, the said plans are still being processed for approval but authority to commence construction was given by the then Director of Lands in FCDA sometime in 1997 to the knowledge of the*

plaintiff.

12. The defendant avers that the plaintiff knew about the development of the plot and that it was based on the plaintiff getting married to the defendant.

13. In furtherance of this marriage preparation, the defendant incorporated companies, got allocation of shops and plots and set up business ventures for the plaintiff. The defendant will at the trial rely on the documents to establish this fact. B

14. The defendant avers that the defendant discovered in April 1999 that the plaintiff is married and the plaintiff then backed out of the marriage contract. The defendant will rely on the letters dated 26/5/99 and oral information given to the plaintiff concerning the plaintiff's (sic) secret marriage. C

15. The defendant will contend at the trial that as the plaintiff has breached the marriage contract and therefore the plaintiff is not entitled to the property anymore. D

16. The defendants adopts and repeats paragraph 1 – 5 of the statement of defence. E

17. The defendant avers that the plaintiff knew that the condition of the gift of the property to her is marriage to the defendant.

18. The defendant avers that having not contributed in any way to the acquisition of the plot and having decided to opt out of the agreement, the gift of the property has failed". F

At the trial, the respondent called DWs 1, 2 and 3 who gave evidence on his behalf but none of them testified on the agreement by the appellant to marry the respondent. Also, the appellant who gave evidence at the trial, did not admit that there was such an agreement or promise to marry the respondent by her at any time. In here testimony she said:- G

"I know the defendant. He was my man-friend. We met early 1993 we had a boy-friend/girl-friend relationship. This cause problem in his family and he decided to send me to England to school in January, 1994. H He has a house in England, his last son is there. He was the Chairman of First Bank that took him to England. He has other business in London. The Bank has a Branch in London. He often come to see me in school.

Our relationship was normal. Nothing extra-ordinary to it. Issue of marriage had not been discussed though because on several occasions I raise it he would say he had problem as to his sperm count. The issue of marriage therefore did not arise. He went on telling me that he would encourage me to get a husband and that he would sponsor the marriage”

The respondent did not give evidence at the trial to substantiate the agreement by the appellant to marry him or explain his actions in respect of the certificate of occupancy of the land in dispute or the development thereof. Also no documents were tendered and admitted in support. This clearly means that all the matters pleaded by the respondent in his defence and counter-claim were not substantiated by evidence and it is trite law that pleadings simpliciter not supported by evidence cannot be accepted as evidence and is deemed abandoned. See F.C.D.A. V. Naib (1990) 3 NWLR (Pt. 138) 270; Ojikuta V. Odeh (1954) 14 WACA 654; Union Dominion Corporation (Nig.) Ltd V Ladipo (1971) 1 NMLR 81 at 85; Omoboriowo & Anr. V. Ajasin (1984) 1 SCNLR 108; (1984) 1 SC 206.

The counter-claim of the respondent consisted of paragraphs 16, 17 and 18 of page 9 of the record of appeal. All these paragraphs were set out earlier in this judgment. I do not intend to repeat them here. Following the counter-claim, the respondent (as defendant) claimed for-

1. A DECLARATION that the defendant is the owner of the property lying situate and being at plot 999 Cadastral Zone 6 Mabushi District, Abuja notwithstanding the fact that the plaintiff's name is on the certificate of occupancy.

2. A DECLARATION that the defendant is the owner of the property (sic) to the plaintiff having failed the plaintiff has no legal or equitable right to the property”.

As I said earlier in this judgment, the respondent did not give evidence at all in support of his defence or counter-claim and all the evidence of his witnesses did not support his defence or counter-claim. There was no document admitted in court which supported him and nothing can be inferred from the evidence at the trial in support of his claims. Pleadings alone cannot constitute any evidence and it is my respectful view that the Court of Appeal was wrong when it held on page

140 of the record that:-

“Looking at the entire Statement of Defence and counter claim one could clearly notice that the appellant was the one who initiated the procurement of the land and at his expense cause buildings to be erected thereon and at paragraph 18 he specifically pleaded:-

‘The defendant avers that having not contributed in any way to the acquisition of the plot and having decided to opt out of the marriage agreement, the gift of the property has failed’.

In my view, there are sufficient facts pleaded to alert the court and the respondent, that notwithstanding that the respondent’s name appears on the Certificate of Occupancy, the appellant procured it in their agreement to erect a building thereon in accordance with the marriage agreement. Which facts, the learned trial judge found established”.

With due respect to the learned Justices of the Court of Appeal, it is wrong in law to “look at” pleadings and accept it as evidence of the facts in issue without actual testimony in support thereof. The crux of the respondent’s defence and counter-claim was that there was breach of promise of marriage by the appellant. No evidence was called in support and the respondent who alleged the promise did not come forward to testify on it. Therefore the pleadings was deemed abandoned and went to no issue at all. Also the trial court did not in its judgment find that the marriage agreement was proved, otherwise the counter-claim would have succeeded.

There is no doubt and this is established by evidence on record, that the application for the plot of land in dispute and the Certificate of Occupancy granted in respect thereof was in the name of the appellant . Neither the respondent nor any of his witnesses challenged or disputed this at the trial.

The question of resulting trust was also considered in this case by the Court of Appeal and was made an issue by the appellant in this appeal. This issue was fully and properly in my view, considered in the leading judgment of my learned brother tobi JSC. I entirely agree with him and I adopt as mine all his reasoning and conclusions reached thereon. I have nothing useful to add on it.

Finally from what I said above, I do not think that this is a proper case in which the Court of Appeal could, in the circumstances, apply the provisions of S. 16 of the Court of Appeal Act as it did. There was no evidence in support of the respondent's counter-claim which the trial court failed to take into consideration in its judgment and which makes the said S. 16 applicable.

In the circumstances, I also find that there is merit in this appeal. I allow it and set aside the decision of the Court of Appeal delivered on 13th July 2000 and restore that of the trial court. I abide by the consequential orders made in the leading judgment including the orders as to cost.

PATSACHOLONU JSC

I have read the judgment of my learned brother Niki Tobi, JSC and I agree with him. I shall nevertheless make a few comments of mine.

The Appellant in this case has appealed to this Court to set aside the judgment given in favour of the Respondent. Both parties had in the past prior to the institution of the action by the Appellant been what the Appellant as Plaintiff in the Court below has described as boy friend girl friend relations. This leaves no one in doubt that there was once in existence an amorous relationship between them. I shall hereafter set out in synopsis the facts leading to the legal battle that has arisen out of what appears to be a jilted romantic saga story. The parties had obviously known each other for sometime as lovers. Now the Appellant as Plaintiff in the High Court had claimed as follows:-

1. A Declaration that the Plaintiff is the bonafide owner of all that Plot No. 999, Cadastral Zone B6, Mabushi District, Abuja.

2. A mandatory order directing the Defendant to handover the Federal Republic of Nigeria Certificate of Occupancy No. FCT/ABU/DT.291 covering the said plot to the Plaintiff forthwith.

3. A perpetual injunction restraining the Defendant either by himself, his agents or privies howsoever called from further trespassing on the land.

4. Two million naira (N2,000,000.00) as General Damages for trespass on the said plot.

She had stated that their relationship was that of boy friend/girl friend. This romantic state of affair so blossomed that the Respondent eventually sent her to England for further studies as a result of some problem in his family. According to her evidence the issue of marriage was never discussed even though she suggested such a matter but he brushed B it aside stating that he would sponsor any marriage she would contract with any one as he raised the problem of his deteriorating sperm count. She had applied for a land allocation and the Respondent's name was signed on her behalf to wit "for Chinye A. M. Ezennah". She was issued with C Receipts for the sums of N3,000.00 and N6,700.00 respectively which she had hitherto paid. Later a certificate of occupancy was issued in respect of plot 999 location at Cadastral Zone Mabushi Abaji which she applied for. The Respondent had meanwhile sent through her sister a D photocopy of the certificate of occupancy, but when she asked for the original he balked and refused. She later found out that the Respondent was trying to alter the name in the certificate of occupancy. The action was instituted when she went into the property and saw a building going up on the land. She emphatically denied any marriage arrangement between E them. She spurned any idea of there being a marriage agreement between them and equally denied that the land was procured by the Respondent in consideration or arising out of the existence of an agreement to marry adding further that she was at the time of giving evidence already married F and had become Mrs. Fati Moh'd Asibelua.

There was also for the defence evidence from one Chief Mathias Igwe to the effect that the Appellant used to come to inspect the building at that site and had informed him that she is the "proposed wife" of the man G he was working for at Ministers Hill. One Alhaji Bellow Abdusalam had equally testified that the Respondent was processing land application for the Appellant as he had introduced her as his fiancée for whom he collected the certificate of occupancy, pointing out that sometimes it is common for H important people to apply for a certificate of occupancy for somebody else. The Respondent had himself made a counter claim in the High Court, in his pleadings. He however proffered no evidence.

In that Court, he lost, although that Court refused to accede to Relief

No. 4 claimed in the statements of claim. On Appeal to the Court of Appeal, the lower Court reversed the judgment of the High Court and set it aside. Thereupon, the aggrieved party appealed to this Court. The Appellant distilled 5 issues for consideration by this Court and they are as follows:-

B 1. Was the Court of Appeal right to hold “*that the Appellant is the owner of the property lying and situated at Plot 999 Cadastral Zone B6, Mabushi District covered by the Certificate of Occupancy No. FCT/ABU/DT 291 notwithstanding the name of the Respondent there*”.

C 2. Was the Court of Appeal right to hold that the land, Plot No. 999 Mabushi District covered by Certificate of Occupancy No. FCT/ABU/DT 291 was allocated to the Appellant by the Minister Federal Capital Territory (as a gift) pursuant to a promise of marriage to the Respondent.

D 3. Is the finding of the Court of Appeal that it was “*the Appellant in furtherance of the marriage agreement acquired the land...*” Supported by evidence and the facts before the Court.

E 4. Whether without a claim for breach of promise of marriage the holding of the Court of Appeal that “*the whole transaction was based on the marriage agreement between the parties*” could stand.

5. Whether any case of resulting trust was made out by the Respondent. In the same vein the Respondent framed 3 issues which are;

F 1. Whether the learned Justices of the Court of Appeal were right in granting the Respondent’s reliefs on his counter-claim (GROUND 1).

2. Whether the learned Justices of the Court of Appeal were right in holding that the property in dispute was procured by the Respondent for the Appellant in furtherance of a marriage agreement, (GROUND 2, 3, AND 4).

G 3. Whether the Respondent made out a case of resulting trust against the Appellant (GROUND 5).

H The Appellant through the submission of her counsel had argued and criticized the holding by the Court of Appeal that “*the finding of fact by the learned trial Judge that the Appellant procured the land in the name of the Respondent cannot be faulted*” and also “*that the mere fact that a Certificate of Occupancy is issued by the Governor does not automatically vest the leasehold thereby created in favour of the person named*”.

Certificate of Occupancy is only a prima facie evidence of the Right of Occupancy in favour of the person as allottee on holdings that could not stand the empirical situations in respect of the factors attendant to the legal nuance of the case. The Counsel for the Appellant then submitted that once it is established from the facts of the case that the land allocation was made directly to the Appellant by a competent authority the presumption raised therein is that the holder is the owner in exclusive possession of the land. He referred to *Osazuwa v. Ojo* (1999) 13 N.W.L.R.(Pt. 634) at 291-292, *Haruna v. Ojukwu* (1991) N.W.L.R. (Pt. 202) P. 205.

The question then posed is this: To whom was the land allocated. In other words regardless of who paid for the application fee and all the other fees, who was granted the Certificate of Occupancy. It is no other person than the Appellant. It is important to revisit part of the evidence of the Appellant which was not rebutted to the effect that she was duly communicated while in England by the Respondent through his sister that the prescribed authority in this case, the Minister of Federal Capital Territory, had finally granted to her the Certificate of Occupancy and to this effect a copy of the same was sent to her. To Counter this point of argument, the Respondent's Counsel submitted that the basis for the success of the Respondent's counter claim is the finding that the Respondent paid all the fees for the allocation of the Plot and signed the application form. This the Counsel claimed was in furtherance of marriage. It is important to bear in mind that the Appellant and the Respondent were once lovers bundled together in amorous state of affair by the goddess of love-Venus. Being the dominant partner who made the move and had the means as evident from the testimony of the Appellant, the Respondent stopped at nothing to show his extreme fondness or love for the Appellant. He sent her overseas for further studies and paid for that. He applied for land allocation on her behalf and succeeded in procuring the land allocation.

Now to attempt to overturn these facts, the Respondent submitted that the property procured was made in furtherance of the contemplated marriage by the parties. In her evidence which was not countered by the Respondent, the Appellant stated that she was the person who first

suggested the idea of marriage and asked the Respondent to strive or endeavour to see her parents. According to her, he appeared laconic and instead suggested that he would sponsor any marriage that she might contract. The necessary inference is that he was neither prepared nor it
B would appear in any way evinced any intention to marry the Appellant. In his statement of defence and counter claim the Respondent had averred as follows:-

1. The defendant avers that he met the Plaintiff sometime in 1991 and both of them agreed to get married.
C

2. Based on this marriage contract, the defendant sponsored the Plaintiff for further studies in England paid all the school fees and supported the Plaintiff throughout her stay until she returned in late 1997. The defendant will at the time of the trial rely on payment proofs and other
D documents.

3. That defendant further avers that it was based on this promise of marriage that the defendant applied for the property in dispute. The defendant will at the trial rely on the application form and all payment
E cheques concerning the property.

4. The defendant avers that the Plaintiff knew about the development of the plot and that it was based on the Plaintiff getting married to the defendant.

5. In furtherance of this marriage preparation, the defendant
F incorporated companies, got allocation of shops and plots and set up business ventures for the Plaintiff. The defendant will at the trial rely on the documents to establish this fact.

6. The defendant avers that the Plaintiff knew that the condition of
G the gift of the property to her is the marriage to the defendant. It is interesting that the Respondent who made these averments did not adduce any evidence to establish that:

(a) there was a marriage commitment duly agreed on,
H (b) that the procurement of the land was in respect of their commitment to get married.

I do not know who the Respondent thought would furnish better evidentiary particulars in respect of these averments. To expect third

parties to testify to the existence of marriage commitment or that the land was given in furtherance of marriage agreement in this case, is not to understand the kernel of the defence case. There has never been in our judicial system when the statements of claim are regarded as evidence. Perhaps in course of time in the progress to enliven and reform justice B system in this country time may come when the pleadings made under oath as is now the practice in England would be regarded as evidence. The evidence of the people who testified for him are no more than hear say beyond the fact that he told them this and told them that. He should have C gone to the Court to challenge the evidence of the Appellant.

Another issue that was bandied about is the question of resulting trust. Did the Respondent make an issue of a resulting trust a cornerstone of his case. Resulting Trust is a trust that can be readily deduced as being implicit in the conduct of parties but without express intent. Blacks Law D Dictionary relies on the definition of a Resulting Trust as made out in the case of *Lifemark Corp. v. Newit Jx.* App. 14 Dist, 655 SW. 2d 310, 316 as a “trust that arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that E the does not intend that person taking or holding that property should have the beneficial interest therein, unless inference is rebutted or the beneficial interest is otherwise effectively disposed of”. The submission of the learned Counsel for the Respondent was that the episode of what happened F can only be said to have set in existence a resulting trust in favour of the Respondent. Let me consider the case of *Street v. Hallett* (1874) 21 Gr. 255 - a Canadian case. In that case a woman while still living with a man who she honestly believed to be her husband but who had been hitherto G lawfully married, made advance of money for the purpose of buying certain real estate, at which the bond for the conveyance was taken with her knowledge in his name. It was held that there was no resulting trust in favour of the woman.

I find no words or conduct on the part of the Respondent from H which I could possibly discover or discern the existence of a resulting trust. There is no proof of failure of marriage commitment supposedly made by the Appellant because there was simply no such agreement to

marry. For a resulting trust to be implied or inferred, there must be in existence sufficient facts to show the circumstances that would give rise to this equitable principle which must demonstrate in no uncertain terms the condition that would ground its presumption i.e. the failure of the condition of which one could readily infer a resulting trust.

In short, all the indices in this case point to one direction and they are follows:-

1. Application for the land was made in the Appellant's name.
2. The land was allocated to the Appellant.
3. There is no evidence that both parties agreed to marry
4. There is no evidence that the expenditure lavished by the Respondent to continue to retain the affection of the Appellant was in furtherance of marriage that was contemplated and planned or known and believed or agreed by both parties.

5. There are not in existence any facts to establish or show that there is now a resulting trust in consequence of the failure or arising out of the breach of promise to marry committed by the Appellant.

In fact this is a case that the Respondent should have spared himself the agony of going through the Court processes. For him, when the going was good he lavished love (I imagine it was reciprocated) money and eventually landed property on the Appellant. When the tide turned, he fell back on non-existent agreement to marry and urged the Court to go the extra mile of pronouncing the existence of a resulting trust. I refuse to lend hand to assuage the feelings of a lover whose romance went awry. The love that once bound these two people and now got frosted can be likened to verse xxxv of Shakespeare "Sonnets" a sort of Lamentation, and also verse 1 of "Passionate Pilgrim". Thus we have in this case so much love and then so much pain. It is the way of the world.

In the final result I allow the appeal and set aside the judgment of the Court below and affirm the judgment of the High Court. I abide by all the consequential orders in the leading judgment.

¹ With the burden; Subject to an incumbrance or charge