

SUPREME COURT OF NIGERIA
22ND FEBRUARY, 2008. SC. 267/2002
CORAM:- S. U. ONU, D. MUSDAPHER, G. A.
OGUNTADE, I. T. MUHAMMAD, P. O. ADEREMI, JJSC

| | | |
|-----------------|-------|------------|
| GRACE MADU | | APPELLANT |
| AND | | |
| DR. BETRAM MADU | | RESPONDENT |

LAND LAW - Title - Establishment of - Five ways to do so - Include traditional evidence or document of title (H1)

LAND USE ACT - Title documents - Rebuttable presumption - Certificate of occupancy - Grant thereof to a person - Entitles him to hold the land to the exclusion of any other person (H2)

EQUITY - Trust - Resulting trust - Arises in two sets of circumstances - It is based upon the unexpressed - But presumed intention of the true owner (H3)

EQUITY - Trust - Resulting trust - Property - Where purchased in the name of another - There is a presumption that that other person - Holds the property for the benefit of the persons - That advanced money for the purchase of the property (H4)

LAND USE ACT - Resulting trust - Certificate of occupancy - Granted in the name of respondent's divorced wife - Available evidence did not create resulting trust - In respondent's favour as wrongfully held by Court of Appeal (H5)

MATRIMONIAL ISSUES - Land matters - Resulting trust - Certificate of occupancy - Granted in the name of respondent's divorced wife - Available evidence did not create resulting trust - In respondent's favour as wrongfully held by Court of Appeal (H5)

FACTS

The plaintiff/appellant was the wife of the defendant/respondent, as from 1976. They stopped living together from November,

1993. The controversy in this case is about a plot of land situate within the Federal Capital Territory which was allotted to the appellant. All the receipts for payments and other documents including the certificate of occupancy were issued in the appellant's name. But the respondent, who was then a staff of the Federal Capital Development Authority, went and collected the original certificate of occupancy. Appellant claimed that she gave all the needed finance to the respondent who then processed the documents on her behalf and in her name. But respondent claimed that he was the person that paid all the expenses for the property which he told the appellant he wanted to secure for himself using appellant's name as his wife.

The trial court found in appellant's favour, holding that she is the rightful owner and allottee of the property in dispute. The sum of N100,000.00 nominal damages was awarded instead of N5 million general damages claimed by appellant. Respondent's appeal to the Court of Appeal was allowed. That court held that resulting trust applied and found in respondent's favour since he was in possession of both the C of O and land in dispute, has built on the land, put tenants thereon who were paying rent to him. Being dissatisfied, appellant has now appealed to the Supreme court.

ISSUES FOR DETERMINATION

“(1) Whether the Court of Appeal was right to hold that the appellant failed to prove ownership of Plot No. 327 covered by Certificate of Occupancy No. FCT/ABU/AN/2685.

“(2) Whether in the circumstances of this case the respondent fully made out a case for resulting trust.”

HELD (Unanimously allowing the appeal per **ADEREMI JSC**)

Title - Establishment of - Five ways to do so

1. As rightly submitted by the appellant in her Brief of Argument, it has now become firmly established that there are five ways of establishing title to land and they are:

- (1) by traditional evidence;
- (2) by document of title;
- (3) by various acts of ownership and possession numerous and positive to warrant inference of ownership;
- (4) by acts of long possession and enjoyment of the land; and

(5) by proof of possession of adjacent land to the land in dispute in such circumstances which render it probable that the owner of the adjacent land is the Owner of the land in dispute. (p. 1105 A)

LAND USE ACT - Title documents

2. Once a person is granted a Certificate of Occupancy over a parcel of land, he is entitled to hold same to the exclusion of any other person unless and until the Certificate of Occupancy is set aside. See Ganikon v. Ugochukwu Chem. Ind. Ltd. (1993) 6 NWLR (Pt.297) 55. And documents of title are clear evidence of transaction between the parties thereto. See Atunrase & Ors. v. Philips & Ors. (1996) 1 NWLR (Pt.427) 637. From the pleadings of the plaintiff/ appellant, it is beyond argument that she predicated her case on documents, the most important of which is the Certificate of Occupancy issued by the Federal Capital Development Authority as a result of her documentary application forwarded to the Authority. This court in its decisions in Osazuwa v. Ojo (1999) 13 NWLR (Pt.634) 286, Shogo v. Atta (2004) 4 NJSC 1, held that a Certificate of Occupancy properly issued as in the instant case where there is no dispute that the document was properly issued by a competent authority raised the presumption that the holder is the owner in exclusive possession of the land. The 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. It should however be noted that the presumption is rebuttable because if it is proved by evidence that another person had a better title to the land before the issuance of the Certificate of Occupancy in which case the Certificate of Occupancy will stand revoked by the court. (p. 1105 E)

Resulting trust - Arises in two sets of circumstances

3. What does "Resulting Trust" connote? Before I answer that question, let me quickly say that the doctrine of "Resulting Trust" is based upon the unexpressed but presumed intention of the true owner. Let it be said that disputes between cohabitants, whether married or unmarried, as to their respective property rights, on the break-down of their relationship, often came to courts for resolution. In the well-known case of West deutsche Landesbank Girozentrale v. Islington

London Borough Council (1996) 2 AER 961, Lord Browne-Wilkinson, sitting in the House of Lords, identified two sets of circumstances when a “Resulting Trust” arises; at page 990 he reasoned:-

“(a) Where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B; the money or property is held on trust for A (if he is a sole provider of the money) or in the case of a joint purchase by A and B, in shares proportionate to their contributions.”

“(b) Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest.”
(p. 1106 D)

D Property - Where purchased in the name of another

4. Given the facts of this case, it is the first set of circumstances that should be applied here. The court will impel or presume in a situation where a purchase of property is made in the name of another that, that other holds the property for the benefit of the person who advanced money for the purchase of the property. The law, in such a situation, presumes that the intention was that the property should be held on trust by the third party transferee. I may go further to say that the same principle also applies where the purchase money was provided partly by the person to whom the property is transferred and partly by another or others. In such cases, the transferee holds the property in trust for all the persons who contributed to paying for it with each having beneficial interest proportionate to the amount of purchase money he advanced. (p. 1107 C)

G Available evidence did not create resulting trust

5. Although, the respondent in his evidence before the trial court said he paid all the money required for the land; but contrary to this assertion, all the receipts are in the name of the appellant. Again, he said he collected the C of O of the plot of land not on behalf of the appellant but as the owner. While agreeing that the Certificate of Occupancy was in the name of the appellant, he was emphatic that the said document was in his possession. He again said that he in-

formed the Federal Capital Development Authority that the land he applied for was for him but that he made it in the name of the appellant. He agreed that he did not forward a written information to the FCDA. The evaluation of these pieces of evidence by the trial Judge that they do not create resulting trust cannot be faulted. It is well grounded. B

There is no presumption of the parties to this case, based on the evidence before the trial court that could have created a resulting trust. The evidence on record has not indicated that an intention that a resulting trust should be created between the parties. If any thing at all, the bare assertion by the respondent that a resulting trust was intended by both of them to be created, has been rebutted by the clear and uncontradicted evidence of the plaintiff/appellant as found by the trial Judge. The lower court was therefore in a serious error when it found that the defence of resulting trust as raised by the defendant/respondent has been proved from the facts and circumstances of this case. (p. 1107 F) C D

NOTABLE POINTS OF INTEREST

ADEREMI JSC E

1. Perpetual injunction - Is not granted at a limited owner's instance
I hereby pause to make a little observation before I continue with this judgment. In the third leg of the reliefs claimed, the plaintiff/appellant prayed for the following relief:-

“An order of perpetual injunction restraining the defendant from further trespassing into the said plot” F

Going by the evidence before the court, the absolute owner of the plot is Federal Capital Development Authority. The plaintiff/appellant is an allottee or a lessee - in other words, she is a limited G owner. The Federal Capital Development Authority has not been made a party to this case. In Chief Dada, the Lojaoke v. Chief Shittu Ogunremi & Anor. (1967) NMLR 181, this court, at page 184 said and I quote:-

“..... It is improper to grant a perpetual injunction at the instance of a limited owner when, the owner of the absolute interest is not a party to the case.” (p. 1108 E) H

ONU JSC

2. Oral evidence is not admissible to contradict documentary evidence

The respondent's contention that the said plot was his and he only requested the MFCT to issue the Certificate of Occupancy in the name of the appellant is specious. Thus, all or any oral evidence tendered by the respondent or relied upon by the Court of Appeal to show that the land in issue belonged to any person other than Mrs. Grace Madu, is inadmissible as it amounts to using oral evidence to contradict contents of documentary evidence - Exhibits P1 to P9 and Exhibits D1 to D9 respectively.

See Section 132 Evidence Act, Cap. 112, Laws of the Federation of Nigeria, 1990. (p. 1110 G)

3. Implication of C of O being in appellant's name

From the overwhelming evidence adduced by the appellant, she had clearly traced her root of title to the Hon. Minister of the FCT who has the authority to allocate such lands. The onus remains heavily on the respondent to show that he had an earlier legal title over the land before the certificate was issued in favour of the appellant, but this, the respondent failed woefully to do. Therefore, the Court of Appeal, with all due respect, was in error when it held that the appellant "only adduced evidence to show that the Certificate of Occupancy was issued in her name nothing more." In this case the appellant need not show more than this. (p. 1111 H)

MUHAMMAD JSC

4. Risk in using another person's name in transactions

Before I drop my pen, I think I should observe that this case, as I see it, should be an eye-opener to many people. Although it is not illegal or prohibited to make use of another person's name in transactions that are solely meant to be in favour of a particular individual, I think it carries a lot of risks where there is a failure in achieving the goals for which the transaction is meant. I fail to appreciate the wisdom behind the concealment of name or identity of a person who, in actual sense is the owner of a thing but would prefer to use the name of another person. The presumption of the law is always that if a docu-

ment for instance, bears the name of Mr. 'X' it in law, belongs to Mr. 'X' except where same is accompanied by conditions and exceptions. (p. 1115 H)

REPRESENTATION

J. O. Adesina, (with her, Ronke Ifayefunmi), for the Appellant. B
Solomon Umoh, for the Respondent.

CASES REFERRED TO

Bank of the North Ltd .v. Aliyu (1999) 7 NWLR (Pt.612) 622 C
Ojo v. Gharoro (2006) 2-3 S.C. 105; (1998) 8 NWLR (Pt.615) 374
FCDA v. Naibi (1990) 3 S.C. (Pt.II) 79; (1990) 3 NWLR (Pt.138)
270
Adegbite v. Ogunfaolu (1990) 7 S.C. (Pt.I) 100; (1990) 4 NWLR
(Pt.146) 578 D
Atunrase & Ors. v. Philips & Ors. (1996) 1 NWLR (Pt.427) 637
Union Bank of Nigeria Plc. v. Ozigi (1994) 3 NWLR (Pt.333) 385
Bank of the North Ltd, v. Aliyu (1999) 7 NWLR 612 at 622 to 632
Osazuwa v. Ojo (1999) 13 NWLR (Pt.634) 286 at 291-292
Uche v. Eke (1998) 7 S.C. (Pt. I) 47; (1998) 9 NWLR (Pt.564) 24 E
Kaigama v. Namnai (1997) 3 NWLR (Pt.495) 549 at 568
Ogbuokwelu v. Umeanafunkwa (1994) 4 NWLR (Pt.341) 676
Agbabiaka v. Saibu (1998) 7 S.C. (Pt.II) 167; (1998) 10 NWLR
(Pt.571) 534 at 546 F
Ukatta v. Ndinaeze (1997) 4 NWLR (Pt.499) 251 at 263

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1979, s. 236
Constitution of the Federal Republic of Nigeria, 1999, s. 297 (1), (2), G
(22)
Evidence Act, Cap. 112, LFN 1990, ss. 132, 146
Federal Capital Territory Act, 1976, s. 1 (3)
Federal Capital Territory Act, Cap. 503, LFN 1990, s. 18 H

LEAD JUDGMENT BY ADEREMI JSC

This is an appeal against the decision of the court below (Court of Appeal sitting in Abuja) delivered on the 12th of April, 2002 al-

lowing the respondent's appeal, setting aside the judgment of the trial court delivered on the 24th March, 2000 and in its place, entered an order dismissing the plaintiff/appellant's claim *in toto*.

I shall preface the consideration of this appeal with the relevant facts leading to same. The plaintiff (hereinafter referred to as the appellant) and the defendant (hereinafter referred to as the respondent) got married sometime in 1976 and cohabited as husband and wife. They had four children. They ceased to live together as husband and wife from November, 1993. By a Land Application Form dated 15th May, 1990, Ref. No. MFCT/LA/90/AN/2685, the Ministry of Federal Capital Territory, Land Administration Department, acting on the instruction of the Honourable Minister acknowledged the receipt of the application form for allocation of land duly completed by the appellant. Suffice it to say that the written response of the Minister dated 15th July, 1990 was addressed to the appellant. According to the appellant, the respondent, her husband then, and who was a staff of the Federal Capital Development Authority, was entrusted by her with the processing of the application and follow up towards obtaining the Certificate of Occupancy. She (the appellant) claimed she made available to her husband, the respondent, all the money needed to facilitate the allocation of the plot of land to her. The respondent however contended that he paid all the expenses on the land. He also claimed that he informed the appellant that he would apply for the land using the appellant's name and that the appellant never raised any objection to the idea. It was at this stage that cohabitation between the husband and wife ceased. The respondent at this point in time went and collected the original Certificate of Occupancy. When the appellant realised that the respondent had collected the Certificate of Occupancy without her knowledge and consent; she demanded for the release of same to her. But the respondent refused to hand it over to her. And all entreaties for the release having failed, the appellant sought a redress from the court of law. She claimed from the defendant/ respondent the following reliefs:

"(1) A declaration that the plaintiff is the owner/allottee of the plot covered by Certificate of Occupancy No.FCT/ABU/AN.2685.

(2) A declaration that the plaintiff is entitled to immediate pos-

session of the said Certificate of Occupancy.

(3) An order of perpetual injunction restraining the defendant from trespassing into the said plot.

(4) N5 Million general damages for trespass. Alternatively, N5 Million general damages for waste.”

It should be noted that at the commencement of the suit, the plaintiff/appellant had in her Writ of Summons joined the Hon. Minister or the FCDA as the second defendant, but she later brought an application which was granted, striking out the name of the said Minister as the second defendant.

Pleadings were filed and exchanged between the parties. The case then proceeded to hearing at the end of which, in a reserved judgment, delivered on the 24th of March, 2000, the trial Judge found in favour of the plaintiff/appellant. In so doing, the learned trial Judge reasoned: -

“Having listened to and watched the parties in the case, I have no doubt in believing and preferring the case made out by the plaintiff as against that of the defendant who seems like a drowning man holding on to a straw for survival. Accordingly, judgment is hereby entered for the plaintiff against the defendant. It is the finding of this court that the plaintiff is the rightful owner and allottee of Plot No. 237 covered by Certificate of Occupancy No. FCT/ABU/AN.2685 and I accordingly hereby so declare; that it is hereby declared that the plaintiff is entitled to take possession of the said Certificate forthwith, which Certificate of Occupancy shall be deposited with the Registrar of this court within seven days of the judgment of this court. That the defendant is hereby restrained from further trespassing into the said Plot No. 237. The plaintiff claims the sum of N5 Million as general damages for trespass alternatively N5 Million damages for waste. The particulars of this claim were not stated nor canvasses (sic) in court per the parocce evidence of the plaintiff.

No evidence was however led in expatiation (sic) of the said claim for damages. I am left with no choice than to award nominal damage, since no materials have been placed before me to enable me even apply common sense or equity to make any reasonable deductions to be awarded. Accordingly, a nominal damage of N100,000.00 is awarded.”

Dissatisfied with the judgment of the trial court, the defendant who is now the respondent before us, appealed therefrom to the court below (Court of Appeal), which after listening to the addresses of their respective counsel, in a reserved judgment delivered on the 12th of April, 2002, allowed the appeal, set aside the judgment of the trial court and in its place, entered an order dismissing the plaintiff/appellant's claim in toto. In so doing, the court below had reasoned: -

"In the circumstances of this case, the respondent relied solely on the fact that the C of O was issued in her name. The appellant sought to show at the time he applied for the land there was a pending marriage between the parties, and with her agreement, applied for and paid for all fees chargeable on the plot in her name. The C of O and all receipts though issued in the name of the respondent, were in his custody. He built on the land and in fact gave it out on rent to the people who are now in occupation. It is only when the marriage soured that the respondent initiated this action.

The defence of resulting trust as raised by the appellant has clearly been proved from the circumstances and facts of this case and the trial court ought to have considered the defence. The appellant was in possession of both the C of O and the land in dispute, he would, in the circumstances of this case, be the beneficial owner. On the whole, this appeal must succeed. Having failed to adduce sufficient evidence before the trial court on her claim, the only logical judgment the court could have arrived at was the dismissal of the respondent's claim.....

Consequently, the decision of the trial court of 24/3/2000 is hereby set aside and in its place an order dismissing the plaintiff/respondent's claim is hereby made."

Being dissatisfied with the said judgment, the appellant has appealed to this court. In her Brief of Argument filed on 4th March, 2003, two issues were raised for determination by this court; they are as follows:

"(1) Whether the Court of Appeal was right to hold that the appellant failed to prove ownership of Plot No. 327 covered by Certificate of Occupancy No. FCT/ABU/AN/2685.

(2) Whether in the circumstances of this case the respondent fully made out a case for resulting trust."

The respondent, also identified two issues for determination and as contained in his Brief, they are as follows:

“(1) Whether the Court of Appeal was right in setting aside the judgment of the trial court and in its place, dismissing the claim of the appellant.

(2) Whether the defence of resulting trust as pleaded by the respondent in this case avails the respondent.”

When this appeal came before us for argument on the 26th of November, 2007, Mrs. Adesina, learned counsel for the appellant, referred to, adopted and relied on the appellant’s Brief of Argument filed on 26th November, 2007 and the Reply Brief filed on the same date, she urged us to allow the appeal, set aside the judgment of the court below and in its place, restore the judgment of the trial court. Mr. Umoh, learned counsel for the respondent, for his part, referred to, adopted and relied on the Brief of the respondent filed on the 21st July, 2005, he urged us to dismiss the appeal and affirm the judgment of the court below.

I have examined the issues raised by the two parties. They are, in my view, materially the same, issue No.1 on the appellant’s Brief is similar to issue No.1 on the respondent’s Brief; while issue No.2 on the appellant’s Brief is identical with issue No.2 on the respondent’s Brief. I agree with the respondent that issues Nos. 1 and 2 on each of the two Briefs can conveniently be argued together. I shall therefore adopt that approach in this judgment. Before I start treating these issues, I think that for a proper understanding of this case, it is necessary to reproduce the salient paragraphs of the Statement of Claim and the Statement of Defence so as to know what case each side presented. Paragraphs 3, 4, 5, 6, 8, 9 and 10 of the Statement of Claim are hereunder reproduced:-

Paragraph 3

“Sometime in May, 1990, the plaintiff applied for allocation of a plot of land within the Federal Capital Territory and a file No. MFCT/LA/90/AN/2685 was opened for her.

Paragraph 4

On completion of the processing and land documentations, the Federal Capital Development Authority allocated Plot No. 327 Zone A7, Wuse II District, Abuja to the plaintiff.

Paragraph 5

The defendant at this stage then offered to assist the plaintiff to complete the processing and follow up towards obtaining the Certificate of Occupancy and so the plaintiff handed over the offer of Terms of Grant dated 19/12/90, to the defendant with the other related documents and receipts.

Paragraph 6

The plaintiff also made available all the money needed to cover the expense payable to the defendant at different times for the purpose of processing the Certificate of Occupancy.

Paragraph 8

The plaintiff avers that without her knowledge, consent or authority, the defendant went to the FCDA and collected the Certificate of Occupancy purporting that he was acting on her behalf.

Paragraph 9

Since then all efforts, letters, petitions by both the plaintiff and the FCDA/MFCT to get him to return the Certificate of Occupancy to her has (sic) rebuffed.

Paragraph 10

The defendant has been claiming falsely and fraudulently that the plot belongs to him and has even broken into that plot and continued building on same even after the commencement of this action.”

Paragraphs 1, 2, 4, 5, 8, 9, 10 and 11 of the Statement of Defence are, in my view, relevant to be placed side by side with those of the plaintiff which I have set out above. I shall now reproduce them:-

Paragraph 1

“The defendant denies paragraph 3 of the Statement of Claim. It was the defendant that was to be allocated the plot in his name. The defendant later filed the application form in the name of plaintiff for himself. The defendant paid all the expenses of the land.

Paragraph 2

The defendant avers that after the payment of the initial fees, the land was allocated to him in the name of the plaintiff (the wife) as a result of the circumstances.

Paragraph 4

The defendant denies paragraph 5 of the Statement of Claim. Defendant avers that he did not offer to assist. The defendant being the lawful owner continued to hold his lawful Certificate of Occupancy.

Paragraph 5

The defendant denies paragraph 6 of the Statement of Claim. Some of the money were paid through his account with Savannah Bank, Abuja. The defendant avers that he paid all the money spent on the land up to date. The plaintiff's name was duly used and the beneficial undisposed interest absolutely for the defendant.

Paragraph 8

The plot was purchased in the name of the plaintiff. With regards to paragraph 9 of the Statement of Claim, FCDA/MFCT realised that the property in issue belongs to the defendant. They all know that plaintiff was used. Plaintiff is not the owner.

Paragraph 9

The defendant avers that he has effective transaction that creates same interest in the property. The defendant avers that there is no presumption of advancement to the plaintiff avers that no valuable consideration from the plaintiff in the transaction.

Paragraph 10

The plaintiff is holding in trust for the defendant.

Paragraph 11

The defendant holds the entire interest on resulting trust and hold the beneficial interest undisposed absolutely for herself. The defendant purchased the plot of land in the name of the plaintiff only."

In arguing issue No. 1 on the appellant's Brief of Argument, it was submitted that the case of the appellant before the trial court was hinged on documents of title which she got from the Hon. Minister for Federal Capital Territory when her application for allocation of land within the Federal Capital Territory was successful. She claimed she tendered in evidence all the documents she received. Those documents of title, she further submitted, constitute one of the five ways by which ownership of land may be established citing in support, the decision of this court in *Idundun v. Okumagba* (1976) 9-10 S.C. 227; (1976) 9-10 S.C. (Reprint) 140. The documents she got all made out in her name and which she tendered in evidence during

the hearing are (1) the Letter of Grant/Conveyance of Approval No. MFC/7/LA/90/AN/2685, marked Exhibit P¹, (2) the Acceptance of Offer written by the appellant marked Exhibit P². She further claimed that she paid all the monies required for the land by MFCT and that all documents including the receipts issued acknowledging the payment or money she paid are in her name. The Certificate of Occupancy on the land which the respondent collected without her authorisation was also in her name. She further submitted that all other oral pieces of evidence proffered by the respondent and admitted in evidence and relied upon by the court below (Court of Appeal) in allowing the appeal of the respondent to it are inadmissible in law, as, according to her, they constitute the admission of oral evidence to contradict the contents of documentary evidence; citing Section 132 of the Evidence Act, Cap. 112, LFN 1990, *UBN Plc, v. Ozigi* (1994) 3 NWLR (Pt.333) 385 and *Bank of the North Ltd. v. Aliyu* (1999) 7 NWLR (Pt.612) 622. It was again contended that the ownership of land comprised in the Federal Capital Territory Abuja is vested absolutely in the Federal Government of Nigeria; Section 297 (1) and (2) of the 1999, Constitution of the Federal Republic of Nigeria and the decision in *Ona v. Arenda* (2000) 5 NWLR (Pt.656) 244, were relied upon for his submission. And that by virtue of Section 18 of the Federal Capital Territory Act, Cap. 503, LFN 1990, the power to grant Statutory Rights of Occupancy over land situate in the Federal Capital Territory to any person is vested in the Minister for the FCT through whom the Federal Government operates in that respect. She, the appellant, has clearly traced her root of title to the Minister; to dislodge her title, the respondent will have to show that he had earlier been granted the land by the said Minister. That would be a better title, that was not established by the respondent, she again argued. She urged that issue No. 1 be resolved in her favour. On issue No.2, which is centered on “Resulting Trust”, the appellant in getting at the meaning or “Resulting Trust” referred to “Words and Phrases Legally Defined” 2nd Edition, page 225 and submitted that there is a resulting trust in favour of the person providing the money unless from the relationship between the two or from other circumstances, it appears that a gift was intended. It was further submitted that there is no iota of evidence that the respondent is the actual

owner of the land and that he directed the Minister to allocate the land earmarked for him (the respondent) to the appellant and while finally submitting that there can be no “Resulting Trust” from a husband to his wife; it was urged on us that all the issues be resolved in favour of the appellant and that the appeal be allowed, the judgment of the court below be set aside, award additional damages for trespass and the judgment of the trial court be affirmed. B

In arguing together the two issues identified by the respondent, it was submitted by the counsel to the respondent that the appellant did not prove her case as averred in her pleadings. The appellant, it was further submitted, must be deemed to have abandoned it as mere averment of fact in a party’s pleading without evidence is not proof of such facts; the decision in Ojo v. Gharoro (2006) 2-3 S.C. 105; (1998) 8 NWLR (Pt.615) 374, FCDA v. Naibi (1990) 3 S.C. (Pt.II) 79; (1990) 3 NWLR (Pt.138) 270 and Adegbite v. Ogunfaolu (1990) 7 S.C. (Pt.I) 100; (1990) 4 NWLR (Pt.146) 578. Evidence in proof of the facts that the respondent applied to the Hon. Minister FCT, Abuja for allocation land; that to the knowledge of the appellant, he (respondent) used her name on the application form, that he paid all the fees chargeable in respect of the land in the name of the appellant using his banks, that he informed and instructed MFCT to allocate the plot to him in the name of the appellant was never controverted by the appellant. Having failed to controvert the evidence of the respondent; the court should believe and act on the testimonies of the respondent; the case of Willoughby v. International Merchant Bank (Nig.) Ltd. (1987) 1 S.C. 137, was relied upon. It was further argued that the concept of resulting trust, borne out of the evidence led by the respondent, which evidence, according to him was not controverted, applies to this case and that the respondent never intended to advance the said land to the appellant; the decisions in Silver v. Silver (1958) 1 AER 523; Warren v. Gumey & Anor. (1944) 2 AER 472 and Shepherd v. Cartwright (1955) A.C 431, were relied upon. He finally urged that the appeal be dismissed and judgment of the court below be affirmed. E F G H

I shall here treat the two issues together. The case of the plaintiff/appellant gleaned from her pleadings, particularly the salient paragraphs of which I reproduced supra is that in May, 1990, she applied

for allocation of a plot of land at the FCT for herself, that all the documentations relating to the land are in her name when they were eventually released. The defendant/ respondent only offered to assist in the processing of the application and that he eventually collected all the documents of title from the office of the Minister for Federal
B Capital Territory. Since the collection of the title documents, the respondent has held on to them; refusing to release them to her and claiming to be the owner of the land. The case of the respondent viewed from his pleadings, the salient paragraphs of which I have
C reproduced above, is that he (respondent) paid all the fees payable to the FCDA in respect of the land and got the land allocated to him in the name of the appellant, his wife adding that he did not offer to assist the appellant in processing the application for the land. It was his further case that the appellant was only holding the land on trust
D for him (the respondent). Because he purchased the land with his own money and got the documentations made in the name of his wife (the appellant) he (the defendant/respondent) is holding the entire interest - the land on resulting trust. In proof of her case, the plaintiff/appellant, while testifying before the trial court said she is a
E business woman running a boutique and doing buying and selling. She and the defendant/respondent got married in 1976 in West Germany but got separated in 1993. She said she paid for and got the documents relating to the land taken out in her name. She tendered
F in evidence a copy of the approval as Exhibit P¹, the Letter of Acceptance of the offer as Exhibit P². She claimed she did not authorise the respondent to collect the C of O. As at the time she was giving evidence, she said a structure was standing on it. She also tendered some documents relating to the land as Exhibits 3 to 9. With this, the
G plaintiff/appellant closed her case, she being the only witness called on her side.

The first witness called by the defendant/respondent was His Royal Highness Eze Nwosu Ibe of Abuja who, in expounding on Igbo custom and tradition, said that if a husband has a property, he is the
H owner of the property and a wife has no right to take away the property from the man. But under cross-examination, he said it was proper for a woman to acquire her own property. And if a woman marries and stays in her husband's house, she can have her own property;

and whatever she has belongs to her. The defendant/respondent, Dr. Betram Madu, a medical doctor married to the plaintiff/appellant with four children, said he applied for the land because he informed the appellant, his wife, that he would use her name to acquire the land. He claimed he paid all the money required for the land. He identified, all the receipts obtained for the payment he made, all of which he tendered as Exhibits D¹ to D¹³. When cross-examined, he said he signed and collected the C of O of his plot of land not on behalf or the plaintiff/appellant but as the owner. He claimed to have collected the Certificate in the name of Mrs. Grace Madu, being the name he used to apply for it. He said that the Certificate was in his custody. He further said and I quote: -

"I informed the FCDA that the land I applied for was for me but I made it in another person's name

There was no written information to FCDA, I was applying for the land for myself but in the name of development I made on the said land..... The drawings are made in the name of Mrs. Grace Madu in trust. At that time she was no longer my wife. The C of O was bearing her name and I had not changed it."

After taking the addresses of counsel of both sides, in finding in favour of the plaintiff in a considered judgment delivered on the 24th of March, 2000, the learned trial Judge held *inter alia*:

"It is instructive to note here that all the receipts bear the name of the plaintiff....."

The defendant is in possession of the said plot of land. By virtue of Section 146 of the Evidence Act, while possession may raise a presumption of ownership, it does not do more and cannot stand when another proves a good rest (sic) of title. The plaintiff has shown that she applied for a piece of land in the normal processes and a piece was allocated to her in her name. No evidence has been adduced to contradict the grant made to the plaintiff as contained in Exhibit P¹. She is therefore the rightful owner of the said plot of land situate and known as Plot No. 327 Zone A7 Wuse II, Abuja.

It is the finding of this court that the plaintiff is the rightful owner and allottee of Plot No.237 covered by Certificate of Occupancy No. FCT/ ABU/AN.2685 and I accordingly hereby so declare; that it is

hereby declared that the plaintiff is entitled to take possession of the said Certificate forthwith, which Certificate of Occupancy shall be deposited with the Registrar of this court within seven days of the judgment of this court. That the defendant is hereby restrained from further trespassing into the said Plot No. 237.

B The plaintiff claims the sum of N5 Million as general damages for trespass alternatively N5 Million damages for waste. The particulars of this claim were not stated nor conversed (sic) in court per the paroc (sic) evidence of the plaintiff.....

C I am left with no choice than to award a nominal damage. Accordingly, a nominal damage of N100,000.00 is awarded. ”

As I have said above, dissatisfied with the judgment of the trial court, the defendant who is the present respondent appealed to the court below. Having taken the addresses of the counsel for the parties ill the court below, that court, in a reserved judgment, delivered in favour of the present respondent on the 12th of April, 2003 reasoned thus:

“In the circumstances of this case, the respondent relied solely on the fact that the C of O was issued in her name. The appellant E sought to show at the time he applied for the land there was a pending marriage between the parties, and with her agreement applied for and paid for all fees chargeable on the plot in her name. The C of O and all receipts though issued in the name of the respondent were F in his custody. He build on the land and infact gave it out on rent to the people who are now in occupation.....

The defence of resulting trust as raised by the appellant has clearly been proved from the circumstances and facts of this case and the trial court ought to have considered the defence. The appellant G was in possession of both the C of O and the land in dispute he would in the circumstances of this case be the beneficial owner. On the whole, this appeal must succeed.....

I accordingly invoke our powers under the said provision to dismiss the plaintiff/respondent’s claim having not adduced sufficient H evidence in proof of the claim. Consequentially, the decision of the trial court of 24/3/2000, is hereby set aside and in its place an order dismissing the plaintiff/respondent’s claim is hereby made.”

The two crucial issues that arise for determination in this ap-

peal are (1) as between the appellant and the respondent who has a better title to the land and (2) whether “Resulting Trust” operates in favour of the defendant/respondent. ***As rightly submitted by the appellant in her Brief of Argument, it has now become firmly established that there are five ways of establishing title to land and they are:*** B

- (1) *by traditional evidence;*
 - (2) *by document of title;*
 - (3) *by various acts of ownership and possession numerous and positive to warrant inference of ownership;*
 - (4) *by acts of long possession and enjoyment of the land;* C
- and

(5) *by proof of possession of adjacent land to the land in dispute in such circumstances which render it probable that the owner of the adjacent land is the Owner of the land in dispute.* D

See *Idundun v. Okumagba* (1976) 9-10 SC. 227 and *Atanda v. Ajani* (1989) 6 B.C. (Pt. II) 87; (1989) 3 NWLR (Pt.111) 511. The appellant predicated her title to the land of Certificate of Occupancy which bears her name although in the possession of the defendant/ respondent. The application which she completed also bears her name. The written approval to her application form together with the letter of acceptance signed by her, both tendered as Exhibits P1 and P² respectively also carry her name. ***Once a person is granted a Certificate of Occupancy over a parcel of land, he is entitled to hold same to the exclusion of any other person unless and until the Certificate of Occupancy is set aside. See Ganikon v. Ugochukwu Chem. Ind. Ltd. (1993) 6 NWLR (Pt.297) 55. And documents of title are clear evidence of transaction between the parties thereto. See Atunrase & Ors. v. Philips & Ors. (1996) 1 NWLR (Pt.427) 637. From the pleadings of the plaintiff/ appellant, it is beyond argument that she predicated her case on documents, the most important of which is the Certificate of Occupancy issued by the Federal Capital Development Authority as a result of her documentary application forwarded to the Authority. This court in its decisions in Osazuwa v. Ojo (1999) 13 NWLR (Pt.634) 286, Shogo v. Atta (2004) 4*** E F G H

NJSC 1, held that a Certificate of Occupancy properly issued as in the instant case where there is no dispute that the document was properly issued by a competent authority raised the presumption that the holder is the owner in exclusive possession of the land. The 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. It should however be noted that the presumption is rebuttable because if it is proved by evidence that another person had a better title to the land before the issuance of the Certificate of Occupancy in which case the Certificate of Occupancy will stand revoked by the court. The contention of the defendant/respondent is that, the land was allocated to him in the name of the plaintiff/appellant (his wife) as a result of what he called some circumstances which he failed to explain through his testimony. His main defence is that he (defendant/respondent) is holding the said land on resulting trust basis.

What does “Resulting Trust” connote? Before I answer that question, let me quickly say that the doctrine of “Resulting Trust” is based upon the unexpressed but presumed intention of the true owner. Let it be said that disputes between cohabitants, whether married or unmarried, as to their respective property rights, on the break-down of their relationship, often came to courts for resolution. In the well-known case of West deutsche Landesbank Girozentrale v. Islington London Borough Council (1996) 2 AER 961, Lord Browne-Wilkinson, sitting in the House of Lords, identified two sets of circumstances when a “Resulting Trust” arises; at page 990 he reasoned:-

“(a) Where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B; the money or property is held on trust for A (if he is a sole provider of the money) or in the case of a joint purchase by A and B, in shares proportionate to their contributions.

(b) Where A transfers property to B on express trusts,

but the trusts declared do not exhaust the whole beneficial interest.”

Going by the above decision of the House of Lords by which I am persuaded, both types of “Resulting Trusts” are based solely on the presumed intention of the settler. It therefore follows that where the settler has expressly or by necessary implication abandoned any beneficial interest in the trust property, there is no resulting trust, the undisposed or equitable interest in the property vests in our country, in the State as *Bona Vacantia*. See *In Re West Sussex Constabulary’s Widows, Children And Benevolent (1930) Fund Trusts* (1971) Ch 1. **Given the facts of this case, it is the first set of circumstances that should be applied here. The court will impel or presume in a situation where a purchase of property is made in the name of another that, that other holds the property for the benefit of the person who advanced money for the purchase of the property. The law, in such a situation, presumes that the intention was that the property should be held on trust by the third party transferee. I may go further to say that the same principle also applies where the purchase money was provided partly by the person to whom the property is transferred and partly by another or others. In such cases, the transferee holds the property in trust for all the persons who contributed to paying for it with each having beneficial interest proportionate to the amount of purchase money he advanced. Although, the respondent in his evidence before the trial court said he paid all the money required for the land; but contrary to this assertion, all the receipts are in the name of the appellant. Again, he said he collected the C of O of the plot of land not on behalf of the appellant but as the owner. While agreeing that the Certificate of Occupancy was in the name of the appellant, he was emphatic that the said document was in his possession. He again said that he informed the Federal Capital Development Authority that the land he applied for was for him but that he made it in the name of the appellant. He agreed that he did not forward a written information to the FCDA. The evaluation of these pieces of evidence by the trial Judge that they do not create resulting trust cannot be faulted.**

It is well grounded.

There is no presumption of the parties to this case, based on the evidence before the trial court that could have created a resulting trust. The evidence on record has not indicated an intention that a resulting trust should be created between the parties. If any thing at all, the bare assertion by the respondent that a resulting trust was intended by both of them to be created, has been rebutted by the clear and uncontradicted evidence of the plaintiff/appellant as found by the trial Judge. The lower court was therefore in a serious error when it found that the defence of resulting trust as raised by the defendant/respondent has been proved from the facts and circumstances of this case.

Accordingly, the appeal is hereby allowed, the judgment of the court below is hereby set aside. For the umpteenth time, I wish to say that from the totality of the evidence placed before the trial Judge, it is very clear that the plaintiff/appellant personally applied for and paid for Plot No.327 covered by Certificate of Occupancy No.FCT/ABU/ AN.2685 and same was consequentially validly allocated to her by the appropriate authority. To the extent to which the defendant/respondent is meddling with the said property, he is a trespasser. The interest of justice demands that the judgment of the trial court be here restored. *I hereby pause to make a little observation before I continue with this judgment. In the third leg of the reliefs claimed, the plaintiff/appellant prayed for the following relief:-*

“An order of perpetual injunction restraining the defendant from further trespassing into the said plot”

Going by the evidence before the court, the absolute owner of the plot is Federal Capital Development Authority. The plaintiff/appellant is an allottee or a lessee - in other words, she is a limited owner. The Federal Capital Development Authority has not been made a party to this case. In Chief Dada, the Lojaoke v. Chief Shittu Ogunremi & Anor. (1967) NMLR 181, this court, at page 184 said and I quote:-

“..... It is improper to grant a perpetual injunction at the instance of a limited owner when, the owner of the absolute interest is not a party to the case.”

Again, accordingly, I hereby make the following orders:-

(1) It is hereby declared that the plaintiff/appellant is the owner/allottee of the plot covered by Certificate of Occupancy No. FCT/ABU/AN.2685.

(2) It is hereby declared that the plaintiff/appellant is entitled to immediate possession of the said Certificate of Occupancy which the defendant/ respondent must surrender to her within seven days of the delivery of this judgment. B

(3) An order of injunction restraining the defendant/respondent from further trespassing on the said plot of land is hereby made. C

(4) There shall be N100,000.00 (One Hundred Thousand Naira) damages in favour of the plaintiff/appellant for trespass committed by the defendant/respondent.

The appellant is entitled to the costs of this appeal which I assess in her favour at N10,000.00. D

ONU JSC

Having been privileged to read before now the judgment just delivered by my learned brother, Aderemi, JSC. I am in entire agreement with him that the appeal is meritorious and therefore succeeds. The two issues proffered at the instance of the appellant for this court's determination, to wit: E

a. Whether the Court of Appeal was right in setting aside the judgment of the trial court and in its place dismissing the claim of appellant; and F

b. Whether the defence of resulting trust as pleaded by the respondent in this case avails the respondent.

The facts of the case as explicitly set out in the leading judgment of my learned brother, Aderemi, JSC., for which I see no need for any further expatiation or enlargement thereon are.

On issue No.1 where the case of the appellant both at the High Court and the court below was made by the production of documents of title, she (appellant) applied within the Federal Capital Territory and a file No.MFCT/LA/90/AN2685, was opened for her and in her name. This was in 1990. That on completion of the processing and documentations, the Federal Capital Development Authority H

(FCDA for short) allocated Plot No.327, Zone A7, Wuse II, District, Abuja to her.

At pages 48 - 50 of the Record, the appellant testified as to how she came about the land and tendered all six relevant documents of title.

B *The law is settled that there are five ways as enunciated in Idundun v. Okumagba (1976) 9-10 S.C. 227; (1976) S.C. (Reprint) 140, how to establish ownership of title, to wit:*

1. *Proof by Traditional history or evidence.*

C 2. *Proof by grant or the production of documents of title.*

3. *Proof by acts of ownership extending over a sufficient length of time numerous and positive enough to warrant the inference that the person exercising such acts is the true owner of the land.*

4. *Proof by acts of long possession.*

D 5. *Proof by possession of connected or adjacent land in circumstances rendering it probable that the owner of such land would in addition be the owner of the land in dispute.*

The appellant's case is based on documents which all emanated from the MFCT. Their validity and authenticity is undoubted and unchallenged. There is no single document in the name of "Dr. Betram Madu" (the respondent) in the records of this land.

F On behalf of the appellant, it is also contended that pursuant to all the steps/processes above mentioned and the various payments as evidenced by all the receipts tendered as well as Exhibits P1 and P9 as well as P.W.9, D1 and D9, FCDA allocated to her plot No. 327 covered by Certificate of Occupancy No.FCT/ ABU/AN2685, is clearly consistent with the appellant's bona fide ownership of the land in issue.

G The respondent's contention that the said plot was his and he only requested the MFCT to issue the Certificate of Occupancy in the name of the appellant is specious. Thus, all or any oral evidence tendered by the respondent or relied upon by the court of Appeal to show that the land in issue belonged to any person other than Mrs. Grace Madu, H is inadmissible as it amounts to using oral evidence to contradict contents of documentary evidence. Exhibits P1 to P9 and Exhibits D1 to D9 respectively.

See Section 132 Evidence Act, Cap, 112, Laws of the Federa-

tion of Nigeria, 1990.

See also *Union Bank of Nigeria Plc. v. Ozigi* (1994) 3 NWLR (Pt.333) page 385 at 400 and *Bank of the North Ltd. v. Aliyu* (1999) 7 NWLR 612 at pages 622 to 632.

Be it noted that it is well settled that the ownership of the land comprised in the Federal Capital Territory, Abuja is absolutely vested in the Federal Government of Nigeria vide *Ona v. Atanda* (2000) 5 NWLR (Pt.656) page 244 at page, 267 paragraphs C-D.

See also Section 297(1) and (22) of the Constitution of the Federal Republic of Nigeria, Section 236 of the Constitution of the Federal Republic of Nigeria, 1979 and Section 1(3) Federal Capital Territory Act, 1976. Section 18 of the Federal Capital Territory Act, Cap. 503, Laws of the Federation of Nigeria, 1990 vests power in the Minister for FCT to grant Statutory Rights of Occupancy over lands situate in the Federal Capital Territory to any person. By this law, ownership of land within the FCT vests in the Federal Government of Nigeria who through the Minister of FCT vest same to every citizen individually upon application. Thus, without an allocation or grant by the Hon. Minister of the FCT there is no way any person including the respondent could acquire land in the FCT. A Certificate of Occupancy properly issued by a competent authority as in the case in hand, raises the presumption that the holder is the owner of the land in respect thereof. A certificate also, be it noted, raises the presumption that at the time it was issued, there is not in existence a customary owner whose title has not been revoked. The presumption is only rebuttable if it is proved by evidence that another person had a better title to the land before the issuance of the Certificate of Occupancy.

(Underlining for emphasis.)

See

(i) *Osazuwa v. Ojo* (1999) 13 NWLR (Pt.634) page 286 at 291-292 paras. H-A.

(ii) *Uche v. Eke* (1998) 7 S.C. (Pt. 1) 47; (1998) 9 NWLR (Pt.564) page 24 at 35 paras. D-H.

(iii) *Kaigama v. Namnai* (1997) 3 NWLR (Pt.495) page 549 at 568 paras. F-G.

From the overwhelming evidence adduced by the appellant, she had clearly traced her root of title to the Hon. Minister of the FCT

who has the authority to allocate such lands. The onus remains heavily on the respondent to show that he had an earlier legal title over the land before the certificate was issued in favour of the appellant, but this, the respondent failed woefully to do. Therefore, the Court of Appeal, with all due respect, was in error when it held that the appellant “only adduced evidence to show that the Certificate of Occupancy was issued in her name nothing more.” In this case the appellant need not show more than this. See *Ogbuokwelu v. Umeanafunkwa* (1994) 4 NWLR (Pt.341) 676.

In *Olohunde v. Adeyoju* *opit cit* at 588, Iguh, JSC., held that “for a Certificate of Occupancy under the Land Use Act, 1978 to be therefore valid, there must not be in existence at the time the certificate issued, a statutory or customary owner of the land in issue who was not divested of his legal interest to the land prior to the grant.”

See also in *Lawson v. Ajibulu* (1997) 6 NWLR (Pt.507) 1 at page 31, where this court held:

“In a claim for declaration of title to land, the production of documents of title alone is not sufficient to discharge the onus on the plaintiff to prove the title he claims; he must go further to trace his root of title to one whose ownership of the land has been established.”

This principle does not apply to this case. It is only relevant in cases where a claimant has proved that he has a prior and unextinguished title to the land so that the new right of occupancy cannot override, extinguish or have priority over that existing right. I am also of the view that the various findings to the effect that the appellant only established that the Certificate of Occupancy was issued in her name and therefore failed to discharge the onus placed on her in a claim for declaration of title to land flies in the face of hard facts on Record and the exhibits tendered. It is well established that the Supreme Court will only interfere with the findings of fact by a Court of Appeal where it appears not to be based on facts established on the record. See

(i) *Agbabiaka v. Saibu* (1998) 7 S.C. (Pt.II) 167; (1998) 10 NWLR (Pt.571) page 534 at 546.

(ii) *Ukatta v. Ndinaeze* (1997) 4 NWLR (Pt.499) page 251 at 263.

The case under consideration is a clear one where the finding of fact ought to be set aside.

ISSUE No.2

This issue asks whether in the circumstances of this case the respondent fully made out a case of resulting trust.

As there can be no resulting trust from a husband to his wife in the instant case and at best only a presumption of advancement or gift, the short answer to this issue where a situation of husband and wife was not made out, is in the negative. B

It is for the reasons I have given above and the fuller ones set out in the judgment of my learned brother, Aderemi, JSC., that I too allow the appeal, set aside the decision of the Court of Appeal and affirm the judgment of the trial court with the additional damages for trespass as therein assessed. C

D

MUSDAPHER JSC

I have had the preview of the judgment of my Lord, Aderemi, JSC., just delivered. For the same reasons contained therein, which I respectfully adopt as mine, I too find this appeal meritorious and I allow it. I set aside the decision of the Court of Appeal rendered on the 12th of April, 2002. I also abide by all the consequential orders including the order for costs. E

F

OGUNTADE JSC

I have had the advantage of reading in draft a copy of the leading judgment by my learned brother, Aderemi, JSC. He has succinctly set out the relevant facts and there is no reason for me to repeat them here. It suffices for me to say that the receipts for the payments made for the property in dispute were in the name of the appellant. Further, the Certificate of Occupancy was similarly in her name. The parties had been husband and wife. They later separated. The standpoint of the respondent which the court below upheld was that the appellant had only been asked to use her name on the relevant receipts and Certificate of Occupancy but that it was understood between the parties that the property belonged to the respon- H

dent.

It was on this hypothesis that the respondent and his counsel founded their case which was upheld by the court below on a supposed resulting trust.

B I do not think that the court below was right. The court of trial which saw and heard the witnesses testify believed and accepted the evidence of the appellant. There were also the documentary exhibits which clearly showed that the appellant and not respondent applied for and was allocated the property. My learned brother, Aderemi, C JSC, has discussed fully the relevant principles of law guiding the applicability of resulting trust. I agree with him that the plain facts of this case do not justify the invocation of the principles of a resulting trust.

D The court below was clearly wrong in its conclusion. I would also allow this appeal with N10,000.00 costs in favour of the appellant.

MUHAMMAD JSC

E My learned brother, Aderemi, JSC., has graciously afforded me an opportunity to read in draft, the judgment just delivered. I entirely agree with his reasoning and conclusion. I will only want to add that it was found by the trial court that the respondent used his F influence and relationship in the FCDA and collected the Certificate of Grant of a plot of land allocated to the appellant. The appellant demanded that the Certificate issued in her name, and which she applied for, be given to her. The respondent refused. All efforts geared to convince the respondent to hand over the Certificate to the "right- G ful owner", i.e. the appellant, failed. That was why she had to resort, as the only solution, to seeking for a legal redress.

H I agree with my learned brother, Aderemi, JSC., on issue one that the appellant had better title to the land in dispute over and above the claim of the respondent as she ably traced her root of title to the FCDA. Furthermore, the document tendered and admitted in evidence at the trial court were all in favour of the appellant:

1. the application form for the grant was in appellant's name;
2. the written approval to appellant's application form and her

letter of acceptance bore her name and signature;

3. the approval building plan and the drawings were made in appellant's name;

4. all the receipts paid for the land transactions bear the name of the appellant;

5. the Certificate of Occupancy (C of O) was issued in B appellant's name.

I do not think there would be better proof in the circumstance of this case which could appropriate ownership of the said plot of land to any other person apart from the appellant. The settled law in C grant of C of O is that, once a person is granted a C of O over a parcel of land, he is entitled to hold that parcel of land to the exclusion of any other person unless the C of O is for good reasons, revoked by the same authority that granted it or the grant is found to be void and set aside by a court of law. See: Ganikon v. Ugochukwu D Chem. Ind. Ltd. (1993) 6 NWLR (Pt.297) 55.

On the issue of "Resulting Trust" claimed by the respondent, I think I should define the term first. It is a trust imposed by law when someone transfers property under circumstances suggesting that he or she did not intend the transferee to have the beneficial interest in E the property. A resulting trust thus arises because of the transferor's intention. The resulting trustee in a fiduciary relation to the beneficiary, where it at all exists, is a genuine trustee. Was there any such trust in this case between the husband (respondent) and his wife (the F appellant)? My answer is emphatic no.

It is unfortunate that the respondent cannot hide under the cover of a resulting trust to deprive the appellant of both the legal and beneficial interest which go along with the title i.e. C of O, in question. There was no foundation laid at all by the respondent to G justify that. I agree with my learned brother, Aderemi, JSC, that the court below was in a serious error to have found that the defence of resulting trust put by the respondent has been proved from the facts and circumstances of this case.

H Before I drop my pen, I think I should observe that this case, as I see it, should be an eye-opener to many people. Although it is not illegal or prohibited to make use of another person's name in transactions that are solely meant to be in favour of a particular indi-

vidual, I think it carries a lot of risks where there is a failure in achieving the goals for which the transaction is meant. I fail to appreciate the wisdom behind the concealment of name or identity of a person who, in actual sense is the owner of a thing but would prefer to use the name of another person. The presumption of the law is always that if a document for instance, bears the name of Mr. 'X' it in law, belongs to Mr. 'X' except where same is accompanied by conditions and exceptions. A good example is where a University Certificate or a West African School Certificate (WASC) is issued in the name of 'X'. The presumption is that it is 'X' that is the rightful owner of that certificate. So it is a dangerous practice where people prefer to hide their identities and resort to using the identities of others in transactions which are from the bottom of their minds, meant to be beneficial to them. If such transactions are meant to be held in such resulting trust, I think they should be qualified by explanations, exceptions or conditions attached.

For the fuller reasons given by my learned brother, Aderemi, JSC., I too allow this appeal. I abide by all the orders made in the leading judgment including order as to costs.

F

G

H