

SUPREME COURT OF NIGERIA
15TH APRIL, 2011. SC. 108/2006
CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F.
TABAI, J. A. FABIYI, B. RHODES-VIVOUR, JJSC

ANTHONY IBEKWE APPELLANT
AND
OLIVER NWOSU RESPONDENT
(Substituted for D.O. Nwosu
(Deceased) by virtue of Order of
Court of Appeal dated 19/2/2003)

LAND LAW - Constructive trust - Where not contemplated in the parties' agreement - Appellant acted under a misconception - In moving into respondent's newly allocated State land - Based on supposed existence of trust (H1)

LAND LAW - Sale - Specific performance order - Meaning - Where there is no sale agreement between the parties - In respect of the portion of land in dispute - There is nothing to rest the order upon (H2)

LAND LAW - Sale - Statute of Frauds 1677 S. 4 - Testimony that the agreement to assign land was oral - Is to no avail - As the statute provides for written agreement or note or memorandum (H3)

ACTIONS - Nonsuit - Meaning - Where appellant failed to substantiate - His counterclaim for specific performance - Outright dismissal was proper (H4)

EVIDENCE - Consideration of - Concurrent findings - Where lower courts properly considered evidence of both sides - Their findings would not be disturbed (H5)

FACTS

This case was tried before the High Court of Anambra State sitting at Onitsha. The plaintiff/respondent was in 1965 allotted a State land Exhibit 'B' at Otumoye, Creek Road, Fegge, Onitsha. Respondent sold 2/5th of the Land to defendant/appellant who paid

the sum of £500 (Five hundred pounds) as consideration, and started development of the property. The State stopped construction works on the land in 1978, and later paid N2,500.00 compensation for works done on the plot (Exhibit B) into the Court's Registry. After some years the Government revoked respondent's building lease and allocated to him another piece of land situate at Niger Bridge Head, Onitsha, (Exhibit A). Appellant wanted to buy Exh A, but failed to pay the agreed price of N30,000.00. Against the wishes of respondent, he entered into the land and commenced building construction without paying the said agreed price.

Respondent sued for trespass, damages and injunction. Appellant in his defence counter claimed for specific performance and contended that the respondent's constructive trusteeship in respect of exhibit B was transferred to the new plot Exhibit A. The trial judge granted the respondent's claim and dismissed appellant's counter claimed for specific performance. Appellant's appeal to the court of Appeal was dismissed. Still dissatisfied, he has further appealed to the Supreme Court raising two issues.

ISSUES FOR DETERMINATION

“(a) Whether the Court of Appeal was correct in holding that there was no basis in law or equity for the appellant to claim that his interests in Exhibit B (Otumoye Creek Road Plot) got automatically transferred to the newly allocated land Exhibit ‘A’ - R/81 Niger Bridge Head, Onitsha.

(b) Whether the Court of Appeal was right in holding that the appellant’s interest died with the revocation of Exhibit B and therefore the appellant had no right to counter-claim for Exhibit A to be assigned to him by way of specific performance.”

HELD (Unanimously dismissing the appeal per **FABIYI JSC**)

Constructive trust - Where not contemplated

1. The appellant acted under a misconception that the respondent’s constructive trusteeship in respect of Exhibit ‘B’ moved to Exhibit A. As there was no contract between the parties in respect of Exhibit A, the appellant cannot unilaterally shift the trusteeship from Exhibit B to Exhibit A. This is so as it was not within the contemplation of the parties when entering into the agreement in respect of Exhibit B that an alternative land would be provided in the form of Exhibit A - in case of an

eventuality. This apart, the constructive trusteeship imposed on the respondent was in respect of 2/5th of Exhibit 'B'.

It was not right to forcefully attempt to export same to claim the whole of Exhibit A. I agree that the doctrine of constructive trust cannot operate to give the defendant a whole for a portion.

I resolve issue (a) against the appellant and in favour of the respondent. (p. 1014 C)

Sale - Specific performance order - Meaning

2. Specific performance is the remedy of requiring exact performance of a contract in the specific form in which it was made or according to the precise terms agreed upon. It is the actual accomplishment of a contract by a party bound to fulfill it. The doctrine of specific performance is that where monetary damages would be an inadequate compensation for the breach of an agreement, the contractor or vendor will be compelled to perform specifically what he has agreed to do. He can, for example, be ordered to execute a specific conveyance of land.

There was no agreement between the parties in respect of Exhibit A, thus there is nothing to rest an order of specific performance upon. (p. 1015 B)

Sale - Statute of Frauds 1677 S. 4

3. The appellant testified that the agreement to assign Exhibit A to him was oral. The two courts below were right in finding that the provision of section 4 of the Statute of Frauds, 1677 operates against such a stance. Section 4 of the Statute of Frauds which is a statute of general application provides as follows:-

"No action shall be brought to charge any person upon any contract of sale of lands, tenements or hereditaments or any interest concerning them, unless either the agreement or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith or some other person by him lawfully authorized."

There was no memorandum between the parties with respect to Exhibit 'A'. None was put in evidence. The appellant attempted to enter into an agreement with the respondent but jettisoned the idea and erroneously backed on the idea that the constructive trust in respect of 2/5th of Exhibit B could be carried over to the whole of Exhibit 'A'. Such turned out to be to no avail and counter produc-

tive; in the main. The learned trial judge was right in dismissing the counter-claim of the appellant. The court below acted in the right direction in confirming same. (p. 1015 E)

ACTIONS - Nonsuit - Meaning

- B 4. The appellant, in a subtle manner, mooted the idea that the trial court should have ordered a non-suit instead of outrightly dismissing his counter-claim. A non-suit denotes that the plaintiff failed to prove something which was essential to his case or that the case which he had proved was different from that which he had pleaded. The desire by the appellant to
C embark upon another trial of his counter-claim is most unwarranted in the prevailing circumstances of this matter. The appellant out-rightly failed to substantiate his counter-claim for an order for specific performance of assignment of Exhibit 'A' to him. (p. 1016 A)

D

EVIDENCE - Consideration of - Concurrent findings

5. The two courts below properly considered the evidence adduced by both sides and put both versions on an imaginary scale as dictated by the decision in *Mogaji v. Odojin* (supra) at page 93
- E The evidence adduced by the respondent clearly outweighed that of the appellant in every material respect. Finally, this is a case where the two courts below made concurrent findings in many respects. The findings are not perverse. They are supported by ample evidence and adequately grounded on substantive law as clearly
F espoused in this judgment. I cannot see my way clear in tampering with same. (p. 1016 C)

NOTABLE POINTS OF INTEREST

G *FABIYI JSC*

1. Definition of trust in equity

- Trust, simpliciter, is the right enforceable solely in equity to the beneficial enjoyment of property to which another person holds the legal title. It is a property interest held by one person (the trustee) at the
H request of another (the settlor) for the benefit of a third party (the beneficiary). For a trust to be valid, it must involve specific property. Certainty of subject matter is an important element in trust. It should reflect the settlor's intent and be created for a lawful purpose. (p. 1013 A)

2. Definition of constructive trust

A constructive trust is an equitable remedy that a court imposes against one who has obtained property by wrong doing. It is imposed to prevent unjust enrichment and creates no fiduciary relationship. It is also termed implied trust, involuntary trust, trust ex delicto; trust ex maleficio, remedial trust, trust in invitum; trust de son tort. B

A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holders of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee: C
Beatty v. Gygenheim Exploration Co. 122 N. E 378, 380 (N.Y 1919).
See: Black's Law Dictionary Ninth Edition, page 1649.

In Kotoye v. Saraki (supra) at page 443, this court pronounced that constructive trust, as in this case, is imposed by equity on the ground of conscience and it is not based on the prior or presumed intention of the parties. (p. 1013 B) D

MUKHTAR JSC

3. Land matters - Proper action here would have been for recovery of money paid for failed land deal E

In my opinion, the original contract or agreement died with the revocation of plot B, and whatever constructive trust imposed on the respondent by equity did not flow to a non-existent new contract that relates to the alternative plot R/81. If the appellant was desirous of acquiring a piece of plot R/81 he should have accepted the offer of the respondent and sealed the transaction before assuming possession. It is a completely different piece of land, and the constructive trust did not transfer to it. In this wise, I am satisfied that the lower court did not err when it held the following in its judgment: F G

"However, with the revocation of Exhibit B the appellant and the respondent had their rights to that property extinguished and all they could claim was compensation for improvement on the land. I cannot see any bases in law or equity for the position of the appellant that the interest in Exhibit B should automatically transfer to the new allocation Exhibit A. The forceful entry of the appellant into that plot without the consent of the respondent established the respondent's claim before the lower court." H

The above finding cannot be faulted and so are the other findings of the court below. I am mindful of the fact that the money paid to the respondent by the appellant for the original plot has not been refunded to the appellant. This may well account for the appellant's persistence that he was entitled to a piece of land in the new allocation - Exhibit A. I believe the right action the appellant should have taken would have been for the recovery of the money he paid the respondent. (p. 1018 E)

REPRESENTATION

B. S. Nwankwo O. O. Omole For the Appellants
G. E. Ezeuko (Jnr) G. I. Ezeuko; E. Onovo (Miss) A. A. Anah For the Respondents

CASES REFERRED TO

Adisa v. Ladokun (1973) 1 All NLR (Pt. 2) 18
Owoade v. Omitola (1988) 2 NWLR (Pt. 77) 413
Aromire v. Awoyemi (1972) 1 All NLR (Pt. 1) 101
Iroegbu v. Okwordu 1990 6 NWLR pt. 159 p. 643
Okonkwo v. Okonkwo 1998 10 NWLR pt. 571 p. 554
Ughutevbe v. Shonowo (2004) 16 NWLR (Pt. 899) 300
Dibiamaka v. Osakwe 1989 3 NWLR part 107 page 101
Kotoye v. Saraki (1994) 7 NWLR (Pt. 356) 414 at 443, 444

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Enugu Division ('the court below' for short) delivered on February 23rd, 2006 which affirmed the judgment of Awogu, J. (as he then was) delivered on 6th July, 1987 at the High Court of Anambra State, Onitsha.

It is apt to state the facts of this matter briefly. The respondent was allocated a state land of Otumoye Creek Road, Fegge Onitsha in 1965. The land was registered as 80/80/648 and referred to as Exhibit "B". The respondent sold a portion (2/5th) of same to the appellant who paid five hundred pounds as consideration. He started to develop same pending the execution of an assignment to him by the respondent with the consent of the Governor or appropriate authority. In 1978, the State Government stopped all construction works on the land and invited application for compensation for works

done on the plot - Exhibit 'B'. The sum of N2,500.00 paid by the Government for compensation was paid into the Court Registry. In March 1979, the Government revoked the State Building Lease and allocated to the respondent another piece of land - plot R/81 at Niger Bridge Head, Onitsha registered as 37/37/1061 which is referred to as Exhibit A. The appellant showed interest in Exhibit A. During negotiation, the respondent asked for N60, 000.00 which was later reduced to N30, 000.00. The appellant who did not pay same, entered into Exhibit 'A' against the wishes of the respondent and commenced construction. The respondent sued the appellant for trespass, damages and injunction. The appellant, in his defence, counter-claimed for specific performance as he contended that the respondent's constructive trusteeship in respect of exhibit B got transferred to the new plot R/81- Exhibit A. B C

The learned trial judge garnered evidence and was properly addressed by learned counsel for the parties. In the considered judgment delivered on 6th July, 1987, the reliefs claimed by the respondent were granted while the appellant's counter-claim for specific performance was dismissed. The appellant's appeal to the court below was dismissed on February 26th, 2006. This is a further appeal to this court. D E

On January 31st, 2011 when the appeal was heard, learned counsel for the appellant adopted the appellant's brief of argument as well as appellant's reply brief of argument and urged that the appeal be allowed. In the same fashion, learned counsel for the respondent adopted the respondent's brief of argument and urged that the appeal be dismissed. F The two (2) issues submitted for determination of the appeal by the appellant read as follows:-

"(a) Whether the Court of Appeal was correct in holding that there was no basis in law or equity for the appellant to claim that his interests in Exhibit B (Otumoye Creek Road Plot) got automatically transferred to the newly allocated land Exhibit 'A' - R/81 Niger Bridge Head, Onitsha.

(b) Whether the Court of Appeal was right in holding that the appellant's interest died with the revocation of Exhibit B and therefore the appellant had no right to counter-claim for Exhibit A to be assigned to him by way of specific performance." H

The respondent also formulated two (2) issues for determination in this appeal. They read as follows:-

“(a) Whether the appellate court was right in holding that the revocation of Exhibit ‘B’ extinguished all rights therein and there was no live interest in law and equity whatsoever to transfer to the new allocation Exhibit ‘A’ by the appellant but a claim for compensation for improvement on Exhibit ‘B’ .

B (b) Whether the Appellate Court as well as the trial court was right on the basis of the available evidence in dismissing the appellant’s counter-claim and entering judgment for the respondent for damages for trespass and injunction.”

C Arguing issue (a) learned counsel for the appellant referred to Exhibit D and submitted that the two lower courts did not properly consider the full import, connotation and denotation of same.

D Learned counsel submitted that a proper construction and application of Exhibit D makes it clear that the conclusion of the court below that there was no basis in law or equity for the position of the appellant that his interest in Exhibit B should automatically transfer to the new allocation - Exhibit A is unsustainable. He felt that Exhibit D makes it clear that the new plot, Exhibit A was in exchange for the original plot - Exhibit B which should rightly invoke the principles of constructive trust. He *E* referred to Black’s Law Dictionary, Sixth Edition page 1510 and cited *Udensi v. Mogbo (Nee Udensi) (1976) 6 ECCLR 354 at 361.*

Learned counsel finally submitted that the facts of this case are apt for the application of the principles of constructive trust.

F Learned counsel for the respondent referred to the case of *Lysaght v. Edwards (1876) CH.D 499* with respect to the doctrine of constructive trusteeship between a vendor and a purchaser. He observed that the case of the appellant is that the new offer in Exhibit A has resurrected the constructive trust in Exhibit B and the trust in Exhibit B imposed by *G* equity must be shifted to Exhibit A. He felt that such was a misconception on the part of the appellant; more especially as the constructive trust imposed on the respondent by equity was in respect of 2/5th of Exhibit ‘B’ and no more.

H Learned counsel observed that constructive trust neither arises from nor is it based on the prior or presumed intention of the parties. He cited the case of *Kotoye v. Saraki (1994) 7 NWLR (Pt. 356) 414 at 443, 444.*

It is apt to deal briefly at this point with the law of Trust and afortiori - constructive trust in that sequence.

Trust, simpliciter, is the right enforceable solely in equity to the beneficial enjoyment of property to which another person holds the legal title. It is a property interest held by one person (the trustee) at the request of another (the settlor) for the benefit of a third party (the beneficiary). For a trust to be valid, it must involve specific property. Certainty of subject matter is an important element in trust. It should reflect the settlor's intent and be created for a lawful purpose. B

On the other hand, a constructive trust is an equitable remedy that a court imposes against one who has obtained property by wrong doing. It is imposed to prevent unjust enrichment and creates no fiduciary relationship. It is also termed implied trust, involuntary trust, trust ex delicto; C trust ex maleficio, remedial trust, trust in invitum; trust de son tort.

A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holders of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee: D *Beatty v. Gygenheim Exploration Co.* 122 N. E 378, 380 (N.Y 1919). See: *Black's Law Dictionary* Ninth Edition, page 1649.

In *Kotoye v. Saraki* (supra) at page 443, this court pronounced that constructive trust, as in this case, is imposed by equity on the ground of conscience and it is not based on the prior or presumed intention of the parties. See: also *Ughutevbe v. Shonowo* (2004) 16 NWLR (Pt. 899) 300; (2004) WRN (vol. 32) 27. E

I need to further state it that Jessel, MR in *Lysaght v. Edwards* F (supra) stated the following, on the doctrine of constructive trust:-

"What is that doctrine? It is that the moment you have a valid contract for sale, the vendor becomes in equity a trustee for the purchase of the estate sold and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, and a right to retain G possession of the estate until the purchase money is paid in the absence of express contract as to the time of delivering possession..."

If anything happens to the estate between the time of sale and the time of completion of the purchase, it is at the risk of the purchaser; if it is a house to be sold and the house is burnt down, the purchaser loses the house. He must insure it himself if he wants to prevent such an accident. If it is a garden and river overflows its bank without any fault of the vendor, the garden will be ruined, but the loss will be the purchaser's." H

The above, as simply pronounced decades ago, sounds logical and pragmatic. I endorse same without any shred of equivocation.

It is not in dispute from the facts of this case that the appellant bought 2/5th of Exhibit B from the respondent. The respondent became a constructive trustee of same to the appellant. Thereafter the lease in Exhibit 'B' was revoked and exchanged with Exhibit 'A'. - Plot R/81 at the Niger Bridge Head, Onitsha. The appellant then showed some interest in buying Exhibit A. During negotiation, the respondent at first asked for N60, 000.00 which was later reduced to N30, 000.00. When negotiation failed, the appellant then moved into Exhibit A without the respondent's consent and started his construction works until when he was made to stop same by the trial court vide an order of interlocutory injunction.

The appellant acted under a misconception that the respondent's constructive trusteeship in respect of Exhibit 'B' moved to Exhibit A. As there was no contract between the parties in respect of Exhibit A, the appellant cannot unilaterally shift the trusteeship from Exhibit B to Exhibit A. This is so as it was not within the contemplation of the parties when entering into the agreement in respect of Exhibit B that an alternative land would be provided in the form of Exhibit A - in case of an eventuality. This apart, the constructive trusteeship imposed on the respondent was in respect of 2/5th of Exhibit 'B'.

It was not right to forcefully attempt to export same to claim the whole of Exhibit A. I agree that the doctrine of constructive trust cannot operate to give the defendant a whole for a portion.

I resolve issue (a) against the appellant and in favour of the respondent.

With respect to issue (b), learned counsel for the appellant maintained that since Exhibit D did not extinguish any interest but merely allocated alternative plots, the two lower courts were in error in not decreasing specific performance in favour of the appellant. He felt that an order of non-suit should have been made.

Learned counsel for the respondent with respect to issue (b), submitted that the two courts below were right in dismissing the counter-claim and entering judgment for the respondent for damages, trespass and injunction based on the totality of the evidence adduced. He cited the case of *Mogaji v. Odojin* (1978) 4 SC 91. He observed that in dismissing the appellants counter-claim, the court below relied on the point that

constructive trust created by Exhibit B cannot be extended to Exhibit A. As well, the court below found that there is no document or memorandum showing the agreement to assign Exhibit 'A' which relates to the Plot at Niger Bridge Head and that such an assignment cannot be oral having regard to the provision of section 4 of the Statute of Frauds, 1677. Learned counsel for the respondent felt that an order of non-suit was not warranted. B

Specific performance is the remedy of requiring exact performance of a contract in the specific form in which it was made or according to the precise terms agreed upon. It is the actual accomplishment of a contract by a party bound to fulfill it. The doctrine of specific performance is that where monetary damages would be an inadequate compensation for the breach of an agreement, the contractor or vendor will be compelled to perform specifically what he has agreed to do. He can, for example, be ordered to execute a specific conveyance of land. C D

There was no agreement between the parties in respect of Exhibit A, thus there is nothing to rest an order of specific performance upon.

The appellant testified that the agreement to assign Exhibit A to him was oral. The two courts below were right in finding that the provision of section 4 of the Statute of Frauds, 1677 operates against such a stance. Section 4 of the Statute of Frauds which is a statute of general application provides as follows:- E

"No action shall be brought to charge any person upon any contract of sale of lands, tenements or hereditaments or any interest concerning them, unless either the agreement or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith or some other person by him lawfully authorized." F G

There was no memorandum between the parties with respect to Exhibit 'A'. None was put in evidence. The appellant attempted to enter into an agreement with the respondent but jettisoned the idea and erroneously backed on the idea that the constructive trust in respect of 2/5th of Exhibit B could be carried over to the whole of Exhibit 'A'. Such turned out to be to no avail and counter productive; in the main. The learned trial judge was right in dismissing the counter-claim of the appellant. The court below acted in the right direction in con- H

firming same.

The appellant, in a subtle manner, mooted the idea that the trial court should have ordered a non-suit instead of out-rightly dismissing his counter-claim. A non-suit denotes that the plaintiff failed to prove something which was essential to his case or that the case which he had proved was different from that which he had pleaded. The desire by the appellant to embark upon another trial of his counter-claim is most unwarranted in the prevailing circumstances of this matter. The appellant out-rightly failed to substantiate his counter-claim for an order for specific performance of assignment of Exhibit 'A' to him.

The two courts below properly considered the evidence adduced by both sides and put both versions on an imaginary scale as dictated by the decision in *Mogaji v. Odofin* (supra) at page 93. See: also Bello v. Emeka (1981) 1 SC 101, Aromire v. Awoyemi (1972) 1 All NLR (Pt. 1) 101; Owoade v. Omitola (1988) 2 NWLR (Pt. 77) 413 and Adisa v. Ladokun (1973) 1 All NLR (Pt. 2) 18.

The evidence adduced by the respondent clearly out-weighed that of the appellant in every material respect.

Finally, this is a case where the two courts below made concurrent findings in many respects. The findings are not perverse. They are supported by ample evidence and adequately grounded on substantive law as clearly espoused in this judgment. I cannot see my way clear in tampering with same. See: Anaeze v. Anyaso (1993) 5 NWLR (Pt. 291) 1, Fajemirokun v. C. B. Nigeria Ltd. (2009) 5 NWLR (Pt. 1135) 588 at page 599.

For the above reasons, I come to the conclusion that the appeal is devoid of merit. It is hereby dismissed as the judgment of the court below delivered on February 23rd, 2006 which affirmed the trial court's decision entered on July 6th, 1987 is hereby confirmed. The appellant shall pay N50, 000.00 costs to the respondent.

H

MUKHTAR JSC

The issues for determination raised in the appellant's brief of argument are as follows:-

"1. Whether the Court of Appeal was correct in holding that there

was no basis in law or equity for the appellant to claim that his interest in Exhibit B (Otumoye Creek Road Plot) got automatically transferred to the newly allocated land Exhibit A Plot R/81 Nigeria bridgehead Onitsha.

2. Whether the Court of Appeal was right in holding that the appellant's interest died with the revocation of Exhibit B and therefore the appellant had no right to counter-claim for Exhibit A to be assigned to him by way of specific performance."

The respondent in this appeal, as the plaintiff in the court of first instance sought the following reliefs against the defendant:-

"(a) N20,000.00 damages for trespass in that the Defendant between the month of May and June and without the consent or permission of the Plaintiff broke and entered into the Plaintiff's land known as plot R/81 and Registered as 37/37/1061 and commenced building operations therein.

(b) PERPETUAL INJUNCTION restraining the Defendant, his servants, agents and assigns from further entry into the said land and from doing any act inconsistent with the Plaintiff's statutory Right of Occupancy in respect of the said land."

In his amended statement of defence, the defendant counter-claimed against the plaintiff by seeking the following reliefs:-

"(a) A declaration that the defendant is entitled to be given an assignment of plot R/81 by the plaintiff for submission to the Commissioner for Works, Lands and Transport, Anambra State for approval.

(b) An order that an assignment of the said plot be executed by the plaintiff in favour of the defendant for submission to the Commissioner for Works, Lands and Transport, Anambra State with a view to approving the same."

The learned trial judge found the plaintiff's case proved and granted the reliefs sought by him. Dissatisfied with the decision the defendant appealed to the Court of Appeal, which affirmed the judgment of the learned trial court. Dissatisfied again he has appealed to this court on three grounds of appeal.

It is not in dispute that the respondent assigned a parcel of land carved out of plot B, Otumoye Creek Allocated to him by the Anambra State Government to the appellant. It is also not in dispute that the said allocation was recovered and an alternative plot was allocated to the respondent, thereby extinguishing the right of the appellant on the original plot B, Otumoye Creek. The issue in con-

troversty now stems out of the alternative plot which the respondent was allocated as an alternative plot to the original plot. It is on record that the transaction in respect of the original plot had been concluded and the appellant had expended some money towards the reclamation of the parcel of land he was assigned from the original plot. As far as the alternative plot is concerned, there was no such conclusion of the transaction for the assignment of a parcel of land before the appellant commenced construction on the land, under the guise that he was entitled to the parcel of land in exchange of the original plot he was assigned. As far as my understanding goes whatever transaction and or agreement between the appellant and the respondent was in respect of the original plot that was revoked, not the new alternative plot. The transaction did not flow into the new allocation. If the appellant wanted a piece of the new plot he would have had to commence a fresh negotiation, which the respondent said they were both not able to conclude, as is illustrated by his evidence which reads thus:-

"When I then got the allocation in Exh. A, the Defendants showed interest and we began to negotiate I asked for N60, 000.00 and following the intervention of P.W.1 I asked for N30, 000.00. I wrote to so inform him by letter dated 30/4/81. The Defendant did not pay. The Defendant then broke into Exh. A and began to build without my consent."

In my opinion, the original contract or agreement died with the revocation of plot B, and whatever constructive trust imposed on the respondent by equity did not flow to a non-existent new contract that relates to the alternative plot R/81. If the appellant was desirous of acquiring a piece of plot R/81 he should have accepted the offer of the respondent and sealed the transaction before assuming possession. It is a completely different piece of land, and the constructive trust did not transfer to it. In this wise, I am satisfied that the lower court did not err when it held the following in its judgment:-

"However, with the revocation of Exhibit B the appellant and the respondent had their rights to that property extinguished and all they could claim was compensation for improvement on the land. I cannot see any bases in law or equity for the position of the appellant that the interest in Exhibit B should automatically transfer to the new allocation Exhibit A. The forceful entry of the appellant into that plot without the consent of the respondent established the respondent's claim

before the lower court.”

The above finding cannot be faulted and so are the other findings of the court below. I am mindful of the fact that the money paid to the respondent by the appellant for the original plot has not been refunded to the appellant. This may well account for the appellant's persistence that he was entitled to a piece of land in the new allocation - Exhibit A. I believe the right action the appellant should have taken would have been for the recovery of the money he paid the respondent. This is an appeal on concurrent findings of two courts, which the law specifically settled should not be disturbed unless they are perverse, not supported by credible evidence and miscarriage of justice has been occasioned. In the present case the findings are not perverse and no miscarriage of justice has occurred. See *Are v. Ipaye* 1999 2 NWLR part 132 page 298, *Dibiamaka v. Osakwe* 1989 3 NWLR part 107 page 101, and *Aroyewum v. Adediran* 2004 13 D NWLR part 891 page 628.

From the foregoing I find no merit in this appeal. I have had the advantage of reading the judgment just delivered by my learned brother Fabiyi JSC, and I am in complete agreement with his reasoning and conclusion that the appeal be dismissed. I also dismiss the appeal, and abide by the consequential orders made in the lead judgment.

ONNOGHEN.JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother **FABIYI, JSC** just delivered, and I agree with his reasoning and conclusion that there is no merit in the appeal. The facts of the case have been stated in detail in the lead judgment and I do not intend to repeat them here except as may be needed to emphasise the point being made.

It is not disputed that what appellant got or paid for in exhibit “B” was a portion of the plot, not the whole plot, in fact it was 2/5 of the plot and nothing more. It is also agreed that by virtue of the interest of the 2/5 portion of the plot, the respondent became a constructive trustee of the appellant in respect of the said portion.

However the new plot, exhibit “A” had nothing to do with the appellant particularly as appellant never acquired any interest in any portion of same. In the circumstance it cannot be said that the constructive

trust imposed on the respondent by operation of the principles of equity in respect of the 2/5 portion of exhibit “B” was transferred to the new plot, exhibit “A”. The two allocations are different and for the appellant to break and enter exhibit “A” without the consent or authority of the respondent and commence construction activities therein, he committed an act of trespass for which he was rightly adjudged liable in damages. It is not proper for the appellant to lay claim to the whole of the plot in exhibit “A” for his 2/5 portion in exhibit “B”.

It is for the above and the more detailed reasons assigned in the lead judgment that I too dismiss the appeal as lacking in merit and abide by the consequential orders contained in the said lead judgment including the order as to costs.

Appeal dismissed.

D

RHODES-VIVOUR JSC

In 1965 the respondent was allocated State Land at Otumoye Creek Road Fegge Onitsha- Exhibit B. He sold a portion of the land to the appellant who paid 500 (Nigeria pounds) for it. The appellant commenced development of the Plot. In 1978 the State Government stopped development on the Plot and paid compensation for work done. The sum of N2, 500 was paid into court as compensation. In March 1979, the State Government revoked the lease and allocated another plot of land to the respondent. (i.e. Exhibit A). The appellant was interested in Exhibit A, so both sides entered negotiation. The respondent asked for N60, 000 but subsequently the parties agreed on N30, 000. The appellant did not pay the sum agreed but entered into Exhibit A and commenced construction. The respondent as plaintiff filed a suit in the High Court of Anambra State, Onitsha for:

(a) N20,000 damages for trespass in that the Defendant between the months of May and June and without the consent or permission of the plaintiff broke and entered into the plaintiffs land known as plot R/81 and Registered as 37/37/1061 and commenced building operations therein.

(b) Perpetual Injunction restraining the Defendant, his servants, agents and assigns from further entry into the said land and from doing any act inconsistent with the plaintiff’s statutory right of occupancy in respect of the said land.

The appellant as defendant had other ideas. He counter claimed for specific performance contending that his interest in Exhibit B was transferred to Exhibit A.

Awogu J (as he then was) presided. In a judgment delivered on 6/7/87 His lordship granted the reliefs claimed by the respondent/plaintiff, and dismissed the counterclaim. Irked by that decision, an appeal was lodged in the Court of Appeal by the appellant. That appeal was dismissed on 26/2/06. This is an appeal against that judgment. B

My lords, once Exhibit B is revoked, the appellant and respondent no longer have any rights to the Plot. All their rights stand extinguished. Their only remedy is compensation as provided by Section 44(1) of the Constitution. It is strange to suggest that with the revocation of Exhibit B the appellants interest therein is transferred to Exhibit A. That is not the position in Law or Equity. The appellant's interest in Exhibit B died with the revocation. Consequently, the appellant forcefully entering Exhibit A confers on the respondent an enforceable cause of action. The respondent was right to go to court to seek redress and the court was correct to enter judgment for him. C

Concurrent findings of fact by the courts below are rarely disturbed by this court except where the findings are perverse, unsupportable by evidence or there has been a miscarriage of justice. See *Iroegbu v. Okwordu* 1990 6 NWLR pt. 159 p. 643 *Okonkwo v. Okonkwo* 1998 10 NWLR pt. 571 p. 554. E

Upon the revocation of Exhibit B, the appellant's interest therein dies a natural death. Both courts below were correct in their reasoning and conclusions. For this and the much fuller reasoning of my learned brother Fabiyi JSC, I dismiss this appeal with costs of N50, 000.00 to the Respondent. F

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